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REPORT OF THE NIAGARA REGIONAL POLICE FORCE INQUIRY

The Honourable W.E.C. Colter, Q.C.
Commissioner

Ontario

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Commissioner

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Niagara Regional Police Force

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la police régionale de Niagara

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June 14, 1993

The Honourable David Christopherson
Office of the Solicitor General
25 Grosvenor Street, 11th Floor
TORONTO, Ontario
M7A 1Y6

Dear Minister:

Having been appointed by Order in Council 751/88, dated the 25th of March 1988, pursuant to the *Public Inquiries Act*, to perform the duties set out in the Order in Council, I now submit my report.

Yours very truly,

W.E.C. Colter
Commissioner

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The conduct of the long and complicated hearings that constituted this Inquiry and the preparation of this report could not have been accomplished without the dedicated assistance and loyal co-operation of the members of the Commission staff. Due to the length of the hearings, there were a number of changes in personnel because of prior commitments and from time to time a sudden influx of taped interviews from the Commission investigators required the temporary employment of additional transcribers and other assistants. The resulting long list of men and women who contributed so much to the Inquiry makes it impractical to single out each person for comment, but, without exception, every one was co-operative and helpful.

Nevertheless, I could not, in good conscience, leave unheralded some whose contributions require special recognition.

My Commission counsel, Tony Kelly, Q.C. and Ron Collins, were forced to virtually abandon their law practices and work day and night in marshalling and presenting before the Inquiry the massive volume of evidence produced by the Commission investigators. This they did, thoroughly and effectively, often under difficult circumstances, but pleasantly and with frequent touches of humour to relieve the tension. Law clerks, Mary Anne Giancola and Marg Watt were uncanny in their ability to quickly produce from the computer an excerpt of the evidence from any particular day, or to collate all the references to any particular subject spread out over 247 volumes.

As Commission Administrator, Thomas Millar, a former Supreme Court of Ontario registrar, and the veteran of seven previous Inquiries, set up the organization of the Inquiry, prepared the annual Commission budget, dealt with the government agencies and made use of his extensive experience to relieve me of the many administrative headaches that inevitably arose. My Administrative Assistant, Eve Bill, suffered through my learning pains while introducing me to the wonderful world of computers, which simplified immeasurably my writing of this report. It was she who edited my efforts, corrected the many glitches, and put the report in proper shape for printing, never audibly expressing her frustration over my frequent interruptions with last minute amendments. Michele Sardy was not only an efficient Secretary, but was always ready with sympathetic support and cheerful encouragement. Ishmael Doku, Commission Librarian, and Elizabeth Sinclair and Eric Stine, Data Processing Technicians, were instrumental in making it possible to retrieve any item of information from the voluminous Inquiry records, transcripts and exhibits.

The Metropolitan Toronto Police Force generously consented to second to the Inquiry seven of their best investigators. To then-Inspector Stan Shillington, then-Staff Sergeants Rocky Cleveland, Winston Weatherbie, Robin Breen and Bob Ellis, Sergeants John Barbour and Rich Baker and to Detective Sergeants Don Sangster and Bob Montrose, who replaced Staff Sergeants Cleveland and Winston Weatherbie late in the Inquiry, I express my deep gratitude for the thorough and competent manner in which they investigated the myriad of allegations and other matters which were referred to them, or which surfaced during the course of their investigations.

In St. Catharines, Marilyn Wellington was Office Manager of the Commission office in the Court House during the lengthy hearings there, and handled the hearing room arrangements, marshalled witnesses, acted as a directory for the public and media reporters, and performed a multitude of other duties in what were frequently minor crisis situations, with efficiency and aplomb. Patty Laurin was Commission Registrar until her untimely death on August 27, 1990. Patty was loved and respected by everyone, with good reason. Not only was she invariably good natured and ever ready to go out of her way, on her own time, to help locate for counsel, or any one, exhibits and transcripts, but I say with complete sincerity that she was the most efficient and conscientious registrar I have encountered during my nearly 30 years on the bench. When a counsel started to ask for an exhibit, she would produce it before the counsel reached her desk. Documents she thought I might require during a witness's testimony were always on my desk each morning. Gwen Hill, Assistant Usher and Judy Taylor, Receptionist were always prepared to "go the extra mile" in serving the public and all of us involved in the hearings.

Cy Cresswell, a great gentleman, was my Usher. A retired policeman and dedicated officer of the Canadian Legion, Cy knew everyone in the St. Catharines area and was affectionately respected by all. He presided over the Hearing Room firmly but with characteristic good humour, and no one could have been more helpful and concerned for my comfort and well-being during the protracted and often stressful sessions in St. Catharines. Cy died suddenly on May 23, 1992, and I shall always remember him as a close and loyal friend.

I know that most of those who participated in this Inquiry (including the Commissioner) assumed at the outset that they were entering upon an exercise that would last a few months, rather than one that would virtually amount to a career, and I appreciate their dedication in patiently and good-naturedly completing the job. It is regrettable that, with the completion of this report, I will inevitably lose contact with many of those who have been so helpful and have become friends, and I take this opportunity of expressing my personal gratitude to them all.

FOREWORD

In this report, I have not attempted to examine policies of police forces in general, nor to make recommendations for the future of any force other than that of the Niagara Regional Police Force (NRPF). I interpret my mandate as being to examine only the problems within the NRPF cited in my terms of reference. Those terms were broad enough to engage the attention of the Commission for the better part of four years. However, the problems which I encountered in the NRPF were in many instances sufficiently generic in nature that I hope some of my findings and recommendations will be of assistance to police forces across the province.

I have avoided naming names of persons who were not members of the NRPF except where it was necessary in order to dispel rumours. If the use of pseudonyms for such persons at times makes it difficult to follow the text, I apologize.

At the first hearing of the Inquiry held on June 27, 1988, I explained my understanding of my mandate as follows:

> "What I am about to say is only my present idea and it is subject to later submissions by counsel, but as I interpret the terms of reference, the purpose of the commission is not to assign blame for misjudgments or even negligence that has occurred in the operation and administration of the Force over the full 14 years of its existence, although that may well be an incidental part of the Commission's findings. Rather, one of the main purposes is to publicly air the events that have given rise to many rumours of mismanagement and even of corruption or criminal conduct and from the lessons learned, to come up with a report containing recommendations that would help the administration to avoid such problems in the future."

Because of the length of this Inquiry, ranks of some of the officers mentioned may have changed, but their rank at the time of the event in question may have some significance. I accordingly have used, to the best of my recollection, the rank the officer held at the time. Some statistics and procedures may also have changed since the conclusion of the evidentiary hearings, but I have attempted to update them.

A basic problem has been that, by its mandate to examine the operation and administration of the NRPF since its creation on January 1, 1971, the Commission frequently dealt with events that occurred long ago. Years after an event, various witnesses recall various happenings in various ways, yet all may be honest and truthful.

In order to carry out its mandate the Commission has of necessity examined the historical events which led up to the call for a public inquiry. This required the Commission to examine a vast body of evidence, oral and documentary, accumulated over the lifetime of the amalgamated Force, involving, amongst other matters, a seemingly endless list of allegations of misconduct against certain members and ex-members of the Force. This examination generated approximately 48,000 pages of evidence, 500 exhibits of which many ran to hundreds of pages, and many thousands of pages of interview transcripts and documents which were delivered to parties but were not made exhibits.

By my terms of reference, and by judicial precedent, I am prohibited from making any finding of criminal or civil responsibility, and no such finding should be inferred from any of my remarks. Such a prohibition is necessary because a commission may admit evidence not given under oath, and the ordinary rules of evidence which provide protection against such matters as hearsay do not apply to public inquiries. I am interested in improper conduct only if it had some detrimental effect upon the operation or administration of the Force or contributed to a loss of confidence in the Force on the part of the public.

INTRODUCTION

THE REGION

The Niagara Region, the largest of the nine regional municipalities in Ontario, covers some 1,850 square kilometres and has a population of approximately 370,000 people. The region consists of all of the Niagara Peninsula situated between Lake Erie and Lake Ontario east of a line drawn between the two lakes a few miles east of Hamilton. Separating the region from New York State to the southeast is the Niagara River, including Niagara Falls. The region is bisected by the Welland Canal. The geographic centre of Niagara is 123 kilometres from Toronto and 46 kilometres from Buffalo, New York. There are significant industrial and agricultural areas in Niagara Region, and it is a major tourist area attracting more than 14 million visitors each year, most of them during the summer months.

The Regional Municipality of Niagara was incorporated in 1969 under authority of Bill 174 of the Government of Ontario, entitled "an Act to establish the Regional Municipality of Niagara." The region officially came into existence on January 1, 1970, with the unification of the counties of Lincoln and Welland. Up to that time it was the only one of the new regions to embrace two counties. Along with regionalization, the 26 original municipalities were reduced to 12; namely the cities of St. Catharines, Niagara Falls, Welland, Port Colborne, and Thorold, the towns of Fort Erie, Grimsby, Niagara-on-the-Lake, Lincoln and Pelham, and the townships of Wainfleet and West Lincoln.

POLICING THE REGION

Coinciding with the implementation of regional government, on January 1, 1970, the Niagara Regional Board of Commissioners of Police (Board) was established to coordinate the unification of municipal policing resources in the region. Every member of a municipal police force within the new region's boundaries officially became a member of the NRPF when it, the first regional municipal Force outside Metropolitan Toronto, became operational on January 1, 1971.

Eleven municipal police forces, ranging in size from 5 to 134, were amalgamated; namely Beamsville, Fort Erie, Grimsby Town, Niagara Falls, Niagara-on-the-Lake, Pelham, Port Colborne, St. Catharines, Thorold, Wainfleet and Welland.

At the outset, the new Force had a combined strength of 444 (396 police officers plus 48 civilians) and was responsible for the provision of police services throughout the region, although the Ontario Provincial Police (OPP) continued to police some rural areas until October 1, 1977. Other forces remain involved in the policing of Niagara Region: the Royal Canadian Mounted Police (RCMP) regarding matters of federal jurisdiction, the Ontario Provincial Police (OPP) regarding provincial highways, and the Niagara Parks Commission maintains a small force to patrol its property in the vicinity of Niagara Falls.

As of June 6, 1992, the NRPF had a strength of 592 police officers and 230 civilian staff. The Force is organized into three divisions: St. Catharines, Niagara Falls and Welland, each of which has a smaller detachment; these are Grimsby, Fort Erie and Port Colborne, respectively, as well as a storefront office in each of Smithville, Niagara-on-the-Lake and Thorold. Headquarters functions are housed with Division 1 in St. Catharines. In addition, the Force maintains other sites in the region to house support units.

THE WORK OF THE INQUIRY

According to a March 21, 1987, article in the *Guardian Express*, a Niagara Falls newspaper, as early as 1972 there were calls by Niagara area politicians and media for a public inquiry into rumours of problems within the NRPF.[1] The rumours and demands for an inquiry escalated over the years, culminating in a March 25, 1988, provincial Order in Council creating this Commission of Inquiry.[2]

During May of 1988, notice of the Inquiry was published in seven daily and seven weekly newspapers, inviting written submissions from interested individuals and groups, and also announcing the intention of holding public hearings and making available copies of the terms of reference. Following publication of the notice, some 52 letters and phone calls raising a variety of concerns were received and acted upon by the Commission.

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[1] See p. *xxi*.

[2] See Appendix A.

At the first session of the public hearings on June 27, 1988, the Commission entertained applications for standing and considered certain matters concerning the procedures and organization of future hearings. By a ruling issued by the Commission on July 6, 1988, guidelines for the hearings were established and standing was granted to counsel for each of the following parties: the Board; the Chief of the NRPF; the NRPF; the Niagara Region Police Association (NRPA); former Chief of Police James A. Gayder; Sergeant Cornelis VanderMeer; the Ontario Police Commission (OPC) and the Ontario Provincial Police (OPP). Standing was denied to three private individuals, who complained of police conduct but had no direct interest in the terms of reference per se. On subsequent occasions, standing was also granted to counsel for Sergeant Edward Typer, Staff Sergeant Michael Miljus, former Sergeant Edward Lake, ex-NRPF mechanic Reg Ellis, Staff Superintendent James Moody, former Staff Sergeant Joseph Newburgh, Sergeant Gerald Melinko, Constable George Onich, civilian members Billie Hockey and Carol Berry, former Staff Sergeant Allan Marvin, Sergeant Ronald Peressotti and Deputy Chief Peter Kelly. Constable Lee Rattray was granted standing to act for himself.[3]

Funding for counsel, out of the Commission's budget, was granted to 16 parties at the same rate as allowed for Legal Aid.

PUBLIC HEARINGS

With the exception of one session in January, 1989, when, at the request of Board counsel, the weapons from the closet were publicly displayed in a Commission hearing room in Toronto, and three days of evidence in the Toronto hearing room in May, 1992 due to the unavailability of a hearing room in St. Catharines, the public hearings were held in Courtroom 6, on the second floor of the Courthouse at 59 Church Street, St. Catharines. Between June 27, 1988, and June 30, 1992, there were 247 days of hearings, which generated some 48,000 pages of transcript of evidence, involved testimony from 165 witnesses and received 506 exhibits. The last of a series of written submissions from counsel were received on July 15, 1992. In total, more than one and one-half million pages of transcripts of evidence and of interviews of prospective witnesses and copies of exhibits were distributed to those counsel who attended the hearings on a regular basis. Some 46 different counsel appeared from time to time representing various parties, but many of these appeared only briefly for a limited purpose. Al-

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[3] For a complete list of counsel, see Appendix H.

though at times as many as 15 counsel might be present, for most of the sessions, the number of counsel attending varied from 7 to 10. Apart from some *in camera* segments, the results of which were later announced publicly, all hearings were open to the general public including the media and were broadcast by Maclean-Hunter to its approximately 80,000 cable television subscribers in the region up to the end of the evidentiary sessions on November 20, 1990. Both electronic and print media at the local and national levels provided extensive coverage of the proceedings at the Inquiry on a regular basis.

CONSULTATION PROCESS

In order to expedite the inquiry process and draw upon existing knowledge and experience in relevant fields, the Commission contracted a number of experts to examine various aspects of its mandate. Several terms of reference were addressed in this manner, and mechanisms were put in place to ensure all interested parties had an opportunity to put forth their views on these subject areas. Parties were invited to submit position papers on the subject areas prior to and following their attendance at a series of workshops held at the Holiday Inn, St. Catharines, on November 6, 7 and 8, 1989. These workshops, chaired by Professor Anthony Doob of the University of Toronto's Centre of Criminology, provided a forum for informal discussion and exchange of views not only with the consultants, but amongst the interested parties. In order to encourage uninhibited and free-wheeling discussion and/or criticism, only the parties, their counsel and persons who had indicated an interest in providing some input into the workshop were invited to attend. While the Commission did not rely on this process to establish or conclude any issues of fact, the material generated proved invaluable background information and complemented the proceedings in the courtroom.[4]

These excellent reports of the consultants are too lengthy to allow inclusion as Appendices to this report, but copies may be obtained by applying to: Office of the Solicitor General, 11th Floor, 25 Grosvenor Street, Toronto, Ontario, M7A 1Y6.

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[4] For a complete list of consultants, see Appendix F.

EVENTS LEADING TO THE INQUIRY

Almost from its inception, the new Force was beset by rumours of mismanagement, misconduct and even corruption. An article in the March 21, 1987, edition of the *Guardian Express*, a Niagara region newspaper, in commenting on the fact that "some local politicians" were calling for a provincial inquiry into the Force, noted that this was not a new issue, since "they have been calling for inquiries into the force's conduct since 1972." The article went on to point out that in January 1972 a district alderman unsuccessfully called for an inquiry into the personal use of cruisers by off-duty detectives, and that at about the same time a Deputy Chief had faced nine *Police Act* charges relating to his use of a militaristic type of discipline against officers of one of the new detachments, who were not accustomed to this in their former small force. Although this was probably only a symptom of the "growing pains" of a new regime, and the charges were dismissed by the judge to whom the trial of the charges was referred, the matter resulted in a good deal of adverse publicity.

Other evidence indicated that members of detachments which had formerly been local independent forces continued in their loyalties to their detachment, rather than to the regional Force as a whole. Under the legislation setting up the regional Force, no police officer could be transferred more than five miles from his station as it was at the time of regionalization, and in July, 1973, the NRPA won a Supreme Court ruling preventing the proposed transfer of certain officers from one division to another.

The public's confidence in the Force was not advanced by the May 11, 1974, drug raid on the Landmark Motel in Fort Erie, involving the strip-searching of 36 women and 9 men, a raid for which the planning was poor and the execution disastrous. A public inquiry followed.[5]

By the early 1980s, the media were frequently reporting instances of alleged irregular or improper conduct on the part of members of the Force at all levels. In October of 1983, Mel Swart, the member of the provincial parliament (MPP) for Welland/Thorold, raised a question in the legislature regarding the appointment of James Gayder as Chief of the NRPF while he was the subject of an internal investigation into allegations that he had delivered an unregistered handgun to one Mark DeMarco, a local businessman who had had several brushes with the law.[6] In the same month, the Solicitor General ordered the OPC to investigate a series of allegations of misconduct on the part of the Niagara Force raised by Mr. Swart, and over 50 allegations made by Mark DeMarco who had been charged with possession of an unregistered weapon.[7] A 240-page report was delivered to the Solicitor General on May 7, 1984, but only a 19-page summary was made public.[8] On August 7, 1984, Mr. Swart released an open letter to the Solicitor General stating that he (Swart) had requested a public inquiry into the NRPF, but got only the OPC investigation. He expressed strong dissatisfaction with the results.

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[5] See page 119.

During the fall of 1984, the Canadian Broadcasting Corporation (CBC) morning radio news carried a series of reports by investigative reporter Gerry McAuliffe, all critical of the NRPF. In December, 1984, the chairman of the Police Board resigned, stating, according to the *Guardian Express* article: "I have tried to ensure the new board got on with the job it is appointed to do, but because of interference beyond my control, the current board, unfortunately, has had to deal with previous board dealings, dealings which were not the business of the new board."

News articles critical of the Force continued to appear, reciting complaints of graduates of Niagara College's Law and Security course that the NRPF hiring practices allowed relatives of police officers to be favoured in hiring sessions; commenting on the resignation of a senior officer after being charged for consorting with prostitutes; and reporting the allegation of a coroner that NRPF officers seized handguns used in suicides and sold them for profit.[9] During the summer of 1986 a series of articles about nepotism in the Force[10] appeared in a local newspaper.

On January 14, 1985, following meetings with Sergeant Cornelis VanderMeer, a member of the NRPF, the OPP commenced a secret investigation of allegations, *inter alia,* that some senior officers of the NRPF had connections to organized crime rings.[11] Commencing on February 11, 1985, the OPP was also assigned to investigate rumours of illegal wiretaps of a telephone owned by the above-mentioned Mark DeMarco. The latter investigation was not concluded until the spring of 1986, and a full 173-page report, finding no impropriety, was presented to the Solicitor General. However, this report was not announced until the other related OPP investigations were finalized and a December 4, 1986, press release summarizing the investigations was all that was ever made public.[12]

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[6] See p. 70.

[7] See p. 123.

[8] See p. 130.

[9] See p. 73.

[10] See p. 4.

These investigations were conducted privately. No detailed reports of the results were published, and no charges were laid, although, as already noted, a summary of the OPC report, finding no misconduct, was tabled in the legislature, followed by public criticism of the lack of specifics. It was common knowledge that investigations were ongoing, and the lack of publication of full particulars of the results only increased the suspicions of the public created by the continuing rumours of improprieties.

Gerry McAuliffe, of the CBC, was not satisfied with the way in which the OPP investigation was proceeding, and commencing on September 30, 1985, the CBC aired six radio reports strongly suggesting that the NRPF was engaging in illegal wiretaps, and calling for a public inquiry. This led to similar demands in the legislature, and Bob Rae, then leader of one of the opposition parties, wrote to then-Premier Peterson suggesting a public inquiry into the NRPF be called to look into the McAuliffe allegations.

Peter Moon, a reporter for the *Globe and Mail*, had met VanderMeer in July 1985, and VanderMeer told him of problems he was having with one C., an alleged criminal, and of his suspicions that a NRPF sergeant was improperly involved with C.[13] Moon wrote a long article in the *Globe and Mail* in October, 1985, about problems in the NRPF, complete with photographs of VanderMeer, C., and some senior officers of the Force.

In the spring of 1986, Mal Woodhouse, a local alderman, received through the mail a number of gun registration certificates in the name of Chief Gayder, with certain areas circled in pencil. A friend of Woodhouse, knowledgeable about guns, advised him that the circles indicated some irregularity in the certificates, and Woodhouse sent the certificates to the Solicitor General. Having received no reply from the Solicitor General, Woodhouse presented a notice of motion to the regional council on August 7, 1986, calling for a public inquiry into the NRPF. Woodhouse then prepared and circulated a package of material supporting his position, including the Peter Moon *Globe and Mail* articles of October 1985, a series of articles from *The Standard* (St. Catharines), a copy of the OPC investigation press release, and a copy of Bob Rae's note to Peterson and letters from Mel Swart calling for an inquiry. Although the motion was defeated by regional council, it received considerable publicity through the media.

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[11] See Project Vino, p. 137.

[12] See p. 145.

[13] See p. 179.

Meanwhile, on January 15, 1986, Mrs. Denise Taylor was appointed to the Board by the province. She interviewed a number of community leaders about the Force, and became concerned about rumours of illegal wiretaps, despite the OPP report dismissing the allegation. Mal Woodhouse gave her copies of the Gayder gun certificates, which increased her concerns. On August 13, 1986, a newspaper article in the *Tribune* (Welland) quoted Mel Swart's criticisms of the OPP investigation, and on October 22, 1986, Mrs. Taylor met with Mr. McAuliffe, who told her he "had seen unequivocal proof that illegal wiretaps were taking place" and predicted that the OPP would find illegalities that would result in Chief Gayder's resignation.

Mrs. Taylor testified that by the fall of 1986 she had received a number of serious allegations about the Force and "did not know where to turn." She approached the local member of the legislature in an attempt to arrange a meeting with the Solicitor General, and on January 15, 1987, met with the Solicitor General and informed him of the allegations she had received, and of what she perceived as attempts to intimidate her and force her to back off on the expression of her concerns. According to her notes of the meeting, she told him that she felt she could not go to the Board because "I concluded that they could not be trusted with this information at this point," and that she could not go to Chief Gayder partly because "he had lied to me" about an investigation into child abuse, and partly because she did not want to divulge her sources.

For his part, on February 3, 1987, Gayder met with a member of the OPC, Kenneth Shultz, concerning his problems with Mrs. Taylor, and Shultz said he would speak to the Chairman of the Commission with a view to obtaining a hearing under section 56 of the *Police Act* regarding Mrs. Taylor, and apparently referred to a similar case in which a chairman was replaced. This hearing never materialized, due to Gayder's suspension on February 5.[14]

It is apparent that, almost from the date of her appointment to the Board, tension developed between Mrs. Taylor and Chief Gayder, and escalated over the course of the year. On January 8, 1987, Mrs. Taylor was elected chairman of the Board. During the summer of 1986, Chief Gayder's son, John, applied to join the Force.[15] He was not hired at the September, 1986, hiring procedures, but was placed on a reserve list. At a hiring session early in January, 1987, he, amongst others, was recommended to be hired. Mrs. Taylor concluded that the Chief had misled the Board regarding his son's application, and on February 5, 1987, she, as Chairman of the Board (Chairman), charged Chief Gayder under the *Police Act* with two counts of corrupt practice and one count of deceit. The Board then suspended Chief Gayder from duty. Deputy Chief John Shoveller was appointed Acting Chief, and on February 17, 1987, he ordered an internal investigation into allegations of misconduct against Mr. Gayder and other Force members.[16] Acting Deputy Chief James Moody was placed in charge of that investigation.

On February 23, 1987, Moody discovered some 229 handguns, shotguns and rifles, and 602 other weapons such as knives, brass knuckles and martial arts devices, as well as police records and files, in closet 374, a locked closet located in the executive area of Headquarters near former Chief Gayder's office.[17] Chief Gayder and his secretary had possession of the only keys to the closet, although the existence of the closet and the fact that it contained weapons was quite widely known. On March 6, Mrs. Taylor, Acting Chief Shoveller and Moody met with local MPP Mel Swart to view the weapons. Later the same day, at Sergeant VanderMeer's invitation, Peter Moon of the *Globe and Mail* attended room 230, in the presence of Shoveller, Moody, Newburgh and VanderMeer to see the contents of the closet. On March 9, an article by Moon appeared in the *Globe and Mail*, describing the seizure

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[14] See p. 11.

[15] See p. 4 ff.

[16] See p. 223 ff.

[17] See p. 227.

"of about 500 offensive weapons from personal lockers at the force's St. Catharines' headquarters," and stating that Acting Chief Shoveller felt that a public inquiry would prevent the Force from continuing its investigation "that has already produced evidence of various improprieties by some of its officers" and which he expected would result in charges against some members.

With nine further *Police Act* charges pending, based on allegations of conversion of Force property to his own use as a result of the finding of the weapons, Mr. Gayder retired from the Force on March 4, 1987. Accordingly, the *Police Act* charges were not pursued.[18] The internal investigation, nevertheless, proceeded and during the months which followed, the Internal Investigation Team (IIT) looked into numerous allegations and prepared a number of volumes of reports. There having been a prior undertaking by Acting Chief Shoveller to representatives of the Ministry of the Solicitor General not to lay charges without consulting a Crown attorney, six volumes of these reports, mainly concerning Mr. Gayder, were delivered in June to the Ministry of the Attorney General for advice as to the laying of criminal charges. Later, four more volumes relating to Mr. Gayder and other Force members were forwarded to the Ministry. William Wolski, a Crown counsel with the Ministry, was assigned the task of reviewing the reports, and preparing a recommendation for the Attorney General.

Meanwhile, the internal investigation continued. On October 5, 1987, not having received a written reply from the Ministry, Mrs. Taylor wrote to then-Assistant Deputy Attorney Douglas Hunt strongly indicating her concern over the delay. This resulted in a meeting on October 15 at the offices of the Ministry of the Attorney General, consisting of Hunt, Wolski, other members of the Ministry, Chief Shoveller and members of the IIT. Hunt advised them that the Ministry was recommending against the IIT's submission that criminal charges should be laid against Mr. Gayder, and they were given a copy of Wolski's memo examining the allegations, which came to the same conclusion.

The IIT were extremely frustrated by this negative recommendation, and immediately reported to Mrs. Taylor, who was equally upset. The following morning the IIT met Shoveller and went through

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[18] See p. 13.

Wolski's report to Hunt, rebutting each of its conclusions, and VanderMeer prepared a brief for the Board. On receipt of the brief, the Board decided to seek independent legal advice, and instructed Board counsel to obtain opinions from three criminal lawyers.

On November 5, 1987, the Board met to consider the three legal opinions and decided to ask the Solicitor General to call a "public inquiry into allegations of improprieties involving NRPF officers as investigated." A letter to this effect was sent to the Solicitor General. VanderMeer was asked to attend this meeting, and was questioned by Board counsel about the guns found in the closet outside Gayder's office. On November 8, Mrs. Taylor and Sergeant VanderMeer met with a local MPP to solicit his help in obtaining a public inquiry. On hearing of the meeting, Chief Shoveller was upset and ordered VanderMeer not to have "... any further meetings with politicians."[19]

On November 13, 1987, the Solicitor General replied to the Board's letter, cautioning the Board not to get involved in operational matters, pointing out that decisions as to the laying of charges was exclusively the Chief's, and that any decision on holding an inquiry was premature pending the Chief's decision. On November 23, Chief Shoveller advised the Board that he had reconsidered the entire matter in the light of the Attorney General's recommendations, and would not be laying any charges. The Board then passed a resolution calling for a public inquiry "into allegations of improprieties within the NRPF and the process by which such allegations were addressed." Later evidence indicated this latter phrase presumably referred to the Ministries of the Attorney General and the Solicitor General.

On November 24, the *Globe and Mail* published a story by Peter Moon about the IIT and Gayder's guns under a front-page headline. The article was based on the brief prepared for the Board by the IIT, and VanderMeer testified that he gave it to Moon to help promote a public inquiry. At the time, he readily admitted this to his superiors when questioned, and was charged under the *Police Act*, pleaded guilty, and forfeited several days' pay.

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[19] Inquiry transcript, vol. 176 (May 9, 1990).

The day following the *Globe and Mail* article, the Solicitor General announced that there would be a public inquiry. After canvassing the views of interested parties, and after revoking an earlier abortive Order in Council, a second Order in Council dated March 25, 1988, was issued creating this Commission of Inquiry.[20] Shortly thereafter, W.A. (Tony) Kelly, Q.C., and Ronald D. Collins were appointed as counsel and associate counsel respectively, and Thomas Millar was appointed administrator. Inspector Stanley Shillington and six senior investigators[21] were seconded from the Metropolitan Toronto Police Force to form the Inquiry's investigation team.

The terms of reference are broad in scope. In preparing this report, I have addressed the various issues by subject matter rather than by historical sequence. This has resulted in dealing with some historical events in more than one chapter, if they had bearing on more than one issue. Appendix B to this report is a chronology which sets out the main events in chronological order. It is recommended that readers who are not familiar with the Niagara situation read that appendix first in order to obtain a more detailed historical overview of the events leading to the Inquiry.

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[20] See Appendix A.

[21] See Appendix G.

PART I

INTERNAL ADMINISTRATION

1 **Hiring and Promotion**

2 **Property**

3 **Force Resources**

1 HIRING AND PROMOTION

Item N°. 1 of the terms of reference requires me to examine the hiring and promotional process of the NRPF. These processes gave rise to some of the rumours of nepotism and preferential treatment within the Force, and the hiring process was central to the conflict that resulted in the suspension of Chief James Gayder.

(1) Overview of the hiring process

The authorized strength of the NRPF is fixed from time to time by the Police Services Board, after consultation with the Chief. When this strength is increased or officers retire or resign, the Force is required to hire new recruits in order to maintain its authorized strength. Historically, the Force has selected these new officers by conducting a recruitment and hiring process approximately twice a year. The hiring procedure is set out in a Force document dated January 24, 1985, and is described in detail in the next section. Under this procedure, all applicants undergo a series of intelligence and physical tests. The results of these tests are combined to make a total possible mark of 100.

Under the Force procedure, a Selection Board, consisting of a Deputy Chief and two superintendents, then interviews the candidates. The number of candidates to be interviewed is calculated by multiplying the number of vacancies by five; that is, if there are five vacancies to be filled 25 candidates will be interviewed. Normally, the candidates selected for interviews are those with top marks from the testing process. A tentative cut-off mark of 80 is used to reduce the list of candidates to the requisite number. If this would produce too many, the cut-off mark is raised; if too few, it is lowered, or if it is felt this would lower the quality of the new hirings, the number to be hired is arbitrarily reduced, and the resulting vacancies are picked up at the next hiring session.

The primary use of the marks is to select the top candidates for the Selection Board interviews so that, once the requisite number of interviewees has been selected, the Selection Board assesses the candidates independently on the basis of the interviews, without reference to their testing scores. As a matter of practice, the Selection Board, at the conclusion of the interviews, reports to the Chief of Police setting out (a) the top candidates, the number representing the vacancies to be filled, and the names of those whom it recommends for immediate hiring; (b) those candidates who were found acceptable, but for whom there are no existing vacancies, but who should be reconsidered at a later date; and (c) those candidates who should be rejected. The Chief then presents his recommendations, based on the Selection Board's report, to the Police Services Board which has the power of appointment pursuant to section 31 of the *Police Services Act*.

Once the Police Services Board has made the appointments, thus filling the existing vacancies, the practice has been for the Chief, or one of the deputies, to send out to the candidates one of three types of letters, advising the candidates that (a) they are being offered a position with the Force, or (b) the vacancies have been filled, but they were found acceptable for future consideration, or (c) simply, that they were not acceptable and thanking them for their interest. The second group of candidates, those found acceptable but not hired, are generally referred to as "alternates", and it is their status that, to a large extent, created the problem which resulted in charges of deceit being laid against then-Chief Gayder.

(2) The John Gayder episode

In the summer of 1986, John Gayder, then 20 years of age, was one of a large number of applicants for the position of constable on the NRPF. He is the son of the late James Gayder, who at that time was the Force's Chief of Police. Controversy over the manner in which his application was processed played a large part in the eventual suspension and subsequent resignation of Chief Gayder, and it was accordingly necessary to go into the matter at the Inquiry hearings in considerable detail.

In 1986, three selection processes took place; one in April, one in August/September, and one in December, 1986/January, 1987. At least 1,350 applications were received during this period and 1,066 candidates were tested in order to fill 10 or 11 vacancies; a ratio of 100 to 1.

During the summer of 1986, the *Standard* published three lengthy articles critically examining nepotism in the NRPF. At about the same time, a hiring Selection Board was being convened consisting of Deputy Chief Frank Parkhouse as Chairman and Staff Superintendents David Gittings and James Moody as members. Due to concern about the *Standard* articles, the Board of Commissioners of Police (as it was then called) detailed Robert Hanrahan, a member of the Board, to attend the August 18-25 hiring sessions as an observer. Some 550 applicants had undergone earlier testing and the Selection Board interviewed the top 38 applicants for the seven existing

Force vacancies. The number interviewed exceeded the five-to-one ratio because of ties in the test results.

On September 2, 1986, Deputy Chief Parkhouse sent to Chief Gayder a memorandum setting out the Selection Board's recommendations. In accordance with the Selection Board's practice, he listed 16 acceptable candidates in order of merit. Since there were only seven openings, candidates numbered 8 to 16 were considered "alternates." The Chief's son, John Gayder, was ranked fifteenth. Chief Gayder forwarded the Selection Board's report to the Board on September 4, 1986, recommending the hiring of the seven top-ranked candidates as soon as openings were available at the Ontario Police College.

At its meeting of September 11, 1986, the Board approved the Chief's recommendation, and at the same time discussed a report on relationships within the Force prepared by Chief Gayder at the Board's request because of the *Standard* articles on nepotism. Mr. Hanrahan expressed his opinion that the interviews "... were conducted fairly and honestly and that there was no nepotism whatsoever."

At this same meeting, the Board created a Monitoring Committee, consisting of Robert Hanrahan, Denise Taylor and James Keighan, the three most recent appointees to the Board, with Mr. Hanrahan as chairman of the committee. The function of the committee was two-fold, namely: (a) to review the Force's hiring policies and procedures and to make recommendations to the Board, (b) to detail one member of the committee to attend hiring sessions in order to monitor the Selection Board's interviews and deliberations and report back to the Board.

Following the Board's acceptance of the Selection Board's recommendations, Deputy Chief Parkhouse sent out to the seven accepted candidates a letter offering them a position with the Force. To the applicants ranked below the sixteenth position, he sent a "Thanks, but no thanks" letter and to those ranked as alternates, he sent a letter, advising that the seven presently available openings had been filled and stating further "Your application will remain on file for 12 months. You may, if you so desire, complete another 'Contact Card' after six months. Contact Cards are available at all offices of the Niagara Force. It will be necessary to undergo our applicant testing process again." This "Parkhouse letter" appears to offer little encouragement to the alternates as regards future employment, and may be contrasted with the letter sent out to alternates by Deputy Chief Shoveller following the earlier 1986 spring hiring sessions of which he was chairman, the last paragraph of which letter states, "However, I am pleased to advise you that because of your final standing in the selection process, your application will receive favourable consideration should additional vacancies be available in 1986."

It appears from the evidence of senior members of the Force that the policy was that these alternate candidates "... will be considered again at a later date," but there was no written policy concerning the treatment of alternates and it is far from clear as to (a) what form that "consideration" was to take or (b) how it was to be implemented. It is common ground that these alternates would be offered employment in descending order of their ranking, if any of those who had been offered jobs to fill the existing vacancies did not accept, or if further positions became vacant before a further selection board was convened. According to the evidence, it would also seem that the unwritten, but generally understood, policy was that the alternates would be advised of future hirings; would be encouraged to reapply and be retested, and would receive some special consideration as being already approved, but their ranking would depend on their tests. However, there does not appear to have been a standard policy as to how such invitations were to be extended. Nor is it clear how "alternate" candidates would interpret the "Parkhouse letter" or the "Shoveller letter" as to what further action was to be expected from them in order to participate in future hiring sessions, although the evidence indicates that the message it is supposed to convey is a positive encouragement to reapply. However, it is apparent that the "Parkhouse letter" to alternates simply advising them of their rejection for immediate hiring and giving no particular encouragement regarding future employment was contrary to the generally understood hiring policy of the Force.

Around the middle of September, at about the same time that the alternates from the August/September process received their "Parkhouse letters," the Force notified approximately 800 applicants of the testing for the next selection process. Testing for six openings was to take place in late September and early October, with Selection Board interviews to be held in late December, 1986, and early January, 1987. Due to some oversight, the former alternates, including John Gayder, were not notified, and were not tested. On October 3, 1986, Staff Superintendent Gittings advised Chief Gayder by memo that the testing had been completed and that the top 31 applicants should, subject to certain other checks, be interviewed. The top 31 applicants in this testing scored 83 or more points.

In December of 1986, at the Board Christmas party, Chief Gayder renewed a discussion he had commenced with Mr. Hanrahan in September about having a hiring process only once a year, as was done in Peel Region. Alternates were mentioned, and Gayder testified Hanrahan suggested that alternates did not have to be re-interviewed or re-tested. Hanrahan recalls the reference to Peel, but said Gayder spoke of a disagreement amongst his staff as to the appropriate treatment of alternates, Gayder's view being that alternates should be hired before new applicants, and the staff's view being that they should apply like any new candidate. Hanrahan was aware that John Gayder was an August/ September alternate, since he had monitored those proceedings. Hanrahan said he told Gayder that he was not sure what the arrangement was, but thought it unnecessary for alternates to rewrite the test, and that the question should go before the newly-formed Monitoring Committee which was to meet in a few days. Gayder agreed that the questions of the treatment of alternates and of a once yearly hiring process should be raised at the Monitoring Committee meeting.

That meeting took place on December 22, 1986, and was called to discuss matters raised at four earlier meetings. Members other than Hanrahan were not aware that the question of rehiring would be brought up. Following other business, Gayder told the meeting about his discussions with Hanrahan, that he had proposed that alternate candidates be re-interviewed but not re-tested, and Hanrahan had agreed. Hanrahan testified that at the beginning of the discussion on December 22, he agreed that retesting was unnecessary. Gayder advised the meeting his son John was an alternate, and under the proposal put forward, he would not have to be re-tested. Mr. Keighan and Mrs. Taylor disagreed with that proposal.

According to each of a number of drafts of the minutes of the meeting a "heated discussion" followed over Hanrahan's and Gayder's proposal that alternates be re-interviewed but not re-tested, with both Keighan and Mrs. Taylor protesting the Chief's conflict of interest because of his son's candidacy. Gayder then left the meeting. In his absence, the discussion regarding the manner of handling alternates continued. Deputy Chief Shoveller explained that, for the August/September hiring, a cut-off mark of 80 per cent of a candidate's overall score was set in order to reduce the number of candidates to the 5 to 1 ratio for the Selection Board interview. However, since the 31 top applicants in the October, 1986, testing scored 83 or more points, the cut-off mark for the Selection Board interview commencing January 5, 1987, was set at 83.

At about this point Chief Gayder returned. Mr. Hanrahan expressed his concern about the fairness to the six alternates who had been given no opportunity to enter the new hiring sessions, in spite of their "special consideration" status, since it was too late to write the test. He suggested a special test for the September alternates, but Mrs. Taylor and Mr. Keighan would not agree, as they felt this would be preferential treatment. Mr. Keighan asked Chief Gayder if letters had been sent to all alternates advising them that their applications would be kept on file, and the Chief indicated that that was the case, although he had not seen his son's letter. According to the minutes as finally approved, "Mr. Keighan then asked did this mean that we were committed to interview these people, the chief answered, yes." Mr. Hanrahan proposed a compromise, that the alternates' original marks would be put in with those of all the other candidates who had written the October test, and the top candidates would be interviewed for the available positions. This was agreed to. Chief Gayder had been absent when Deputy Chief Shoveller advised of the cut off mark being raised to 83, and apparently understood that the alternates were to be added to the interviewees from the October group. On December 23, he appointed Deputy Chief Parkhouse as chairman of the next Selection Board, and directed him to include for interviews the six alternates from the August/September session.

Deputy Chief Shoveller was on vacation from December 23, 1986, to January 4, 1987. On his return to work on January 5, 1987, he learned that a Selection Board was to commence interviews that day, and asked for a list of candidates. On noting that all alternates from the previous Selection Board were to be re-interviewed, although two, one of whom was John Gayder, had test results that were lower than 83, he advised Chief Gayder and Deputy Chief Parkhouse that this was contrary to the Monitoring Committee direction of December 22. Chief Gayder did not agree with this interpretation, and said he would attempt to obtain a clarification. He attempted to contact Mr. Hanrahan but was unsuccessful, and called Larry Quattrini, the Board Administrator who had been present at the meeting, but his recollection was inconclusive. At about 4:00 p.m. that day, Gayder reached Hanrahan, but Hanrahan did not agree with Gayder's understanding, and said he would speak to Keighan and Mrs. Taylor and get back to Gayder. By that time, John Gayder had already been interviewed. Hanrahan was unable to speak to Keighan and Taylor until the Board meeting of January 8, and as a result did not get back to Gayder on January 5, and the interviews proceeded as scheduled. The Selection Board consisted of Deputy Chief Parkhouse as chairman, and Staff Superintendent Moody and Staff Superintendent Gittings as members. Mrs. Taylor sat in as monitor.

The Selection Board interviewed 34 applicants from January 5 to January 13, 1987. At a meeting of the Board of Commissioners of Police on January 15, 1987, Parkhouse submitted a memorandum recommending, in descending order, 20 of these applicants, and, due to impending retirements and the availability of six additional places at the Ontario Police College, he recommended that the Force hire 12 applicants instead of the intended six. John Gayder was ranked twelfth, and would have been included in the recommended hiring. The availability of the extra Police College places had not been learned until January 7.

The minutes of this meeting record a "... general disagreement as to recommendations, if any, arising from the December 23 [*sic*] Monitoring Committee meeting." Notes of the January 15 meeting made by two secretaries present indicate considerable confusion amongst those who had been at the Monitoring Committee meeting as to what had been discussed, how the candidates were to be selected for interviews, and whether anything had actually been decided. Mr. Hanrahan was not present on January 15, and it was decided that another meeting should be called to settle the unresolved issues. Meanwhile, it was decided to hire the first seven candidates on the list, leaving five openings.

Around this time, at an accounts meeting, Keighan and Shoveller discussed the December 22 meeting and disagreed about what had been decided regarding alternates, and whether the word "hire" or "interview" had been used in Keighan's question to Gayder. On January 20, 1987, the full Board met to consider the issues raised at the January 15 meeting. The confusion over what had happened at the December 22 meeting remained. The Board finally decided that, beyond the seven already hired no additional candidates from the January Selection Board would be hired and that a new Selection Board would be convened. On January 22, Gayder was directed to convene a second Selection Board to interview the 23 candidates who had received 80 to 83 marks on the October, 1986 testing and who had not been previously interviewed, and to re-interview the top five alternates from the first January Selection Board. For some reason, perhaps due to the general confusion, no provision was made to re-interview the remaining alternates from the first January Selection Board.

The second Selection Board sat on January 26 and 27. The Board consisted of Acting Deputy Chief Moody (who had made it very clear at another stage of the Inquiry that he was no supporter of Gayder), as chairman, Staff Superintendent Gittings and Superintendent Swanwick as members, and Mrs. Taylor as an observer. By a memorandum dated January

27, 1987, the Selection Board recommended the hiring of the same five candidates who had been the top five alternates selected by the previous Selection Board and recommended for hiring by Parkhouse. These included John Gayder.

The Board of Commissioners met on Wednesday, January 28, to consider the Selection Board's report. Apparently without realizing that candidates 13 to 20 from the first selection had not been re-interviewed, the Board questioned as to how it happened that the same five names had been recommended. A heated discussion followed. When Chief Gayder attempted to speak to the matter, he was told to "shut up" by Mrs. Taylor, who stated that she had come up with quite a different list of top candidates. The Board then passed a motion to hire none of the candidates at that time.

Gayder asked for a further meeting with all senior staff present in order to clear the air. This meeting was set for Thursday, February 5.

On Friday, January 30, 1987, Deputy Chief Shoveller met with Sergeant VanderMeer and Mrs. Taylor at Mrs. Taylor's house. John Crossingham, Mrs. Taylor's next-door neighbour, was also present. Mr. Crossingham is a solicitor, with no specific expertise in police matters, but Mrs. Taylor had frequently consulted him about her Police Commission problems. On learning of Mrs. Taylor's concerns about Gayder, Crossingham referred her to William Dunlop, a Burlington lawyer, as an expert on police matters. Mrs. Taylor informed Shoveller that she was considering laying *Police Act* charges against Chief Gayder relating to the hiring events involving his son. Shoveller advised her to confront Gayder with her allegations in order to give him an opportunity to provide an explanation before laying charges.

On Sunday, February 1, Sergeant VanderMeer, while visiting Mrs. Taylor at her house, offered to advise Mr. Hanrahan, who was a friend of his, about the proposed *Police Act* charges. Mr. Hanrahan testified that he met VanderMeer at a party that night, and the Sergeant informed him that Mrs. Taylor was going to lay *Police Act* charges against Gayder. Hanrahan was surprised.

Mr. Hanrahan told the Inquiry that, at a break in a Board meeting in the fall of 1986, Mrs. Taylor had told him that she was unhappy with Gayder, and he had suggested to her that Gayder had only a year-and-a-half to go to retirement, and he (Hanrahan) would prefer to let the time go by "rather than acting in a more dramatic fashion."[1] However, Mrs. Taylor did not discuss the proposed charges with any member of the Board prior to the February 5 meeting, when the charges were laid. She did consult with various lawyers, including a Crown attorney, and the charges were typed in advance of the February 5 Board meeting.

At that meeting, Mrs Taylor, as chairman of the Board, laid three charges of "major offences" under the *Police Act* against Chief Gayder, as follows;

> (1) "You stand charged with deceit in that you did wilfully or negligently make a false misleading or inaccurate statement pertaining to official duties contrary to section 1 (d) (ii) ... That on or about the 22nd day of December, 1986, at the Headquarters of the Niagara Regional Police Force at 68 Church Street in St. Catharines, Ontario, in the course of a meeting with the Monitoring Committee of the Niagara Regional Board of Commissioners of Police, you did state to members of the Monitoring Committee that a representation had been made by a member of the Niagara Regional Police Force to unsuccessful applicants for the position of Constable with the said Force during the next hiring selection procedure without having to undergo the applicant testing process again."[*sic*]
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> (2) "You stand charged with a corrupt practice in that you did improperly use your character and position as a member of the Police Force for private advantage contrary to section (1) (f) (v).... That between the 21st day of December, 1986 and the 6th day of January, 1987, you contrary to direction given to you by the members of the Monitoring Committee of the Niagara Regional Board of Commissioners of Police did instruct Deputy Chief Frank H. Parkhouse, the Chairman of the Selection Board to include among the candidates who were eligible for interviews for the position of Constable with the Niagara Regional Police Force, persons, including your son, John Gayder, who based on test scores, was not eligible for interviews for the position of Constable with the Niagara Regional Police Force."
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> (3) "You stand charged with a corrupt practice in that you did improperly use your character and position as a member of the Police Force for private advantage contrary to section 1 (f) (v) .... That on or about the 22nd day of December, 1986 at a meeting

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[1] Inquiry transcript, vol. 99 (Sept. 6, 1989): 111.

> of the Monitoring Committee of the Niagara Regional Board of Commissioners of Police at 68 Church Street, St. Catharines, Ontario, you did speak repeatedly to members of the Monitoring Committee in support of the application of your son, John Gayder, to be hired as a Constable of the Niagara Regional Police Force."

Mr. Hanrahan stated that Mr. Dunlop, one of the lawyers consulted by Mrs. Taylor, was present, and advised the Board "that the charges were legitimate and that the Board had no choice but to suspend Gayder." Accordingly, the Board passed a motion suspending Gayder, although it would appear that some members were less than enthusiastic. In his evidence, Mr. Hanrahan said, "I would not have charged the Chief at that time if I were in her position." When interviewed by Inquiry investigators, Mr. Keighan stated: "I didn't know that she was going to go ahead with it. I was somewhat, you know, I was hoping to God that she had enough, you know, to back up what she had done."[2] In testimony, he said "I would say I experienced almost a disbelief as to what was happening." However, in their evidence at the Inquiry both Hanrahan and Keighan supported the Board action. The other two commissioners were not called as witnesses.

Apparently no one realized that the first charge probably did not disclose any offence at all, since it did not set out what the alleged deceitful representation was, although it could, of course, have been amended. Nor did anyone appear to take into account that, in the second charge, the "direction" allegedly given to Chief Gayder was not a lawful order since it was given by a committee, and, under Regulation 791 section 31(1) and the *Police Act* section 17(1), only the Board could give a lawful order to a Force member. As to the third charge, the Board counsel advised the Inquiry that he considered that it could not have been successfully prosecuted. To proceed to charge the Chief of Police and immediately issue a statement to the media announcing his suspension on the grounds of deceit and corruption, as was done, without being very sure of the legality of the procedure, would appear to justify the later concerns of some of the Board members about the action.

At the February 5, 1987 meeting, Deputy Chief Shoveller was appointed Acting Chief of Police. On February 17, he ordered an internal investigation into rumours of corruption within the Force and, as a result of the discovery of a large number of handguns and other weapons in a closet used by Gayder, nine additional *Police Act* charges against him were prepared. According to a letter of March 4, 1987, from Mrs. Taylor to the Solicitor General advising of Gayder's resignation, the additional charges consisted of counts of discreditable conduct, of neglect of duty, and of corrupt practice. On March 4, 1987, James Gayder retired from the Force, and the *Police Act* charges automatically expired. Gayder testified that he took early retirement on his lawyer's advice in view of the cost of defending the mounting number of charges. The evidence indicates that some of the members of the IIT did, in fact, intend to keep exerting pressure on Gayder until he resigned. A member of the Force gave evidence that a member of the IIT told him that they intended to keep "ratchetting" Gayder by laying a couple of additional charges each week until he resigned.

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[2] Statement (May 20, 1988): 44.

It is apparent that the direct cause of Gayder's suspension was Mrs. Taylor's, and subsequently the Board's, perception that Gayder had deceived them by whatever he told them at the December 22, 1986, Monitoring Committee meeting. That there was considerable confusion and great disagreement about what actually was said at that meeting became painfully evident during the hearings.

Something like seven or eight draft versions or memoranda of amendments to the minutes were prepared and then further amended following acrimonious debate. At the December 22, 1986 meeting, Mrs. Isabelle Wilcox, the very experienced confidential secretary to the Board, was called in to take minutes some time after the Committee had convened. She had not been instructed in this regard, and was not sure how much detail she was expected to record. Because of the unexpected summons, she had with her only a "sundry notebook" of appointments, phone messages etc., and her original notes could not be produced at the hearings, since the notebook had been destroyed once it was filled up, as was the normal practice.

However, from her shorthand notes in that book, she had prepared, at the time, very brief draft minutes. In this first version, what appears to be the only relevant reference to the hiring procedure in relation to alternates was a note that items to be discussed at the next meeting were: "people on short list — interview process — cut-off at one year — regularize process — one inventory per year — how long this application stay on file?" The balance of this draft simply enumerated a number of unrelated items to be discussed at a future meeting. This draft was discussed with Mr. Hanrahan, the committee chairman, and probably other committee members.

A number of further drafts or notes of proposed amendments were prepared from time to time, but unfortunately were not dated, and it is difficult to be sure of their chronological order. What was taken to be the second draft was prepared as "Addendum to Minutes of Monitoring Committee Meeting Held on Tuesday, December 22, 1986" and greatly expanded the first draft. It noted that Gayder had pointed out that his son was a prospective candidate; that Mr. Keighan pointed out that Gayder had a conflict of interest and should refrain from further discussions respecting candidates; that Mrs. Taylor reiterated Keighan's comments and said "Chief, you are out of order," and that Gayder then left the meeting. The only note in the draft as to what was discussed in his absence was Deputy Chief Shoveller's suggestion that the passing mark should be raised from 80 per cent to 83 per cent to produce high calibre candidates. Gayder insists he was unaware that the cut-off mark in the October 1986 tests had been raised to 83. The draft states that following Chief Gayder's return, Mr. Hanrahan expressed concern about unfairness to the alternates if the mark was raised "... when they were told they did not have to reapply and would be hired automatically." The draft states that Deputy Chief Shoveller pointed out that the six alternates had been sent a letter advising that "... they would be kept on file, that is to say the shortlist." Mr. Hanrahan then proposed "... that these candidates be allowed as any other applicant to write the test and take the physical examination." This draft of the minutes noted that there was a discussion as to whether the applications should be carried into 1987 and added "... this in relation to the six candidates who were told they would be hired." This sentence was deleted in later drafts.

Mrs. Wilcox produced to the Inquiry another copy of the typewritten draft N°. 2, referred to above, which she had used to inter-line in ink, as notes for a third draft, further amendments suggested by a memo which she produced and which was headed "Notes from Bob Hanrahan." Since this memo contained a notation, "Send copies of Addendum to Keighan, Taylor, Hanrahan and Acting Chief Shoveller," it must have been prepared after Gayder's suspension on February 5, 1987, and Shoveller's appointment as Acting Chief on that date, and the laying on that date of the *Police Act* charges against Gayder. The amendments to draft N°. 2 deleted the references to Deputy Chief Shoveller's suggestion of an increase in the 80 per cent cut-off mark, and altered the notation of Mr. Hanrahan's concern about unfairness to candidates "... when they were told they did not have to reapply and would be hired automatically" to read: "Mr. Hanrahan advised that it would be unfair to the six candidates not to interview them when they were told they did not have to reapply." Also added, immediately thereafter, was this sentence: "Mr. Keighan and Mrs. Taylor were of the opinion that these six candidates should have been tested like any other applicants." Following the item about Deputy Chief Shoveller stating that letters had been sent to the six saying, "They would be kept on file, that is to say the shortlist," was added the note, "Chief Gayder concurred." This document, Mrs. Wilcox referred to as "notes" for her next draft.

Mrs. Wilcox also produced a typed memo she had prepared, with a notation "Excerpt from February 10/87 Discussing Amendments to December 22, 1986 Meeting" and headed "Minutes of Monitoring Committee, Tuesday, February 10, 1987 at 11:20 A.M." This document contains the following note: "When asked by Mr. Keighan whether letters to the shortlisted candidates indicated that their applications would be kept on file were sent after the last hiring, the Chief indicated that this was the case. Mr. Keighan asked did this mean that we were committed to (shorthand says hire) but this is scribbled through and written in longhand is the word "interview" these people. The chief answered yes." (The foregoing is a verbatim reproduction of Mrs. Wilcox's note, including the portion in brackets). At the end of the document is the note: "Motion R.F. Keighan, seconded D.R. Taylor, that the minutes of December 22, 1986 be hereby adopted." Presumably, this meant that the minutes were adopted as amended by the previous notes in that same document.

Another typed memo, undated, was produced by Mrs. Wilcox, which she stated she had typed, but did not know where it came from. It contained a note, amongst others, "Mr. Hanrahan concerned about the rights of the six who were told that they did not have to reapply and would be hired automatically ... Mr. Hanrahan proposed that they be allowed, as any other applicant, to write the test and take the physical examination." [It is to be noted that it was then (December 22) too late to arrange the tests, and that this was realized at a later stage of the December 22 meeting.] Yet another similar undated typed memo stated, amongst other things, "Mr. Hanrahan advised that it would be unfair to the six candidates not to interview them when they were told that they did not have to reapply."

Another undated memo was produced by Mrs. Wilcox outlining seven amendments, obviously referring to another set of draft minutes of the December 22 meeting, since it referred to page numbers. The second amendment on that draft was "Page 2 — Amendment N°. 2 — Mrs. Taylor reiterated ... Chief, you are out of order — you have a conflict of interest." The latter words were not contained in the previous draft minutes. The third amendment on that document was "Page 2 — Amendment N°. 3. The Chief mentioned that he had spoken to Mr. Hanrahan and that in Mr. Hanrahan's view the ..."[*sic*]. Previously, the draft minutes had said that "Mr. Hanrahan advised that it would be unfair to the six candidates not to interview them when they were told that they did not have to reapply." The amendment accordingly showed this as being a quote from Mr. Hanrahan by Chief Gayder, rather than being Mr. Hanrahan's statement. The fifth amendment on that document was "Page 3 — Amendment N°. 5. "Chief Gayder concurred" — to be deleted. To read as follows: When asked by Mr. Keighan whether letters to the shortlisted candidates indicating that their applications would be kept on file were sent after the last hiring, the Chief indicated that this was the case." The sixth amendment was "Amendment N°. 6 — Mr. Keighan asked did this mean that we were committed to hire these people. The Chief answered yes." The next amendment was "Page 3 — Amendment N°. 7 — Amend to read: It was then decided that the grades of the six candidates would stand and ..."[*sic*]

Yet another set of minutes was then prepared, stamped at the top "Unofficial Minutes", with a written notation "Amended 87.02.10, "incorporating the amendments referred to above. (This amendment was dated after Gayder's suspension). These new draft "unofficial" minutes were apparently considered at a monitoring committee meeting held on February 10, 1987, but the word "hire" contained in Amendment N°. 6 above was changed to "interview," so that the paragraph now reads "Mr. Keighan asked did this mean that we were committed to interview these people. The Chief answered yes."

Thus there were at least seven or eight different drafts of what occurred at the December 22, 1986 meeting, and Mrs. Wilcox thought there was another version, which she had been unable to locate. It seems apparent that the members who were present at the December 22 meeting kept constructing and reconstructing, long after the meeting, what they believed was said at that meeting. It leaves a finder of fact in considerable doubt whether anyone present left the meeting with any real idea of what had occurred, and whether any decisions or recommendations were, in fact, made.

The minutes of the January 15 meeting, held over three weeks after the original meeting, state that "There was general disagreement as to recommendations, *if any*" (my emphasis) arising from the December 22, 1986 Monitoring Committee meeting. The final minutes were the result of repeated modifications of the original minutes, and major modifications were made following Gayder's suspension, leaving the impression that the minutes were being reconstructed to justify the Board's perception, upon which Gayder's suspension was based, that Gayder had deceived the Monitoring Committee at its December 22 meeting, and had deliberately failed to carry out the Monitoring Committee's instructions regarding what candidates were to be interviewed by the January Selection Board. I do not believe that the Board members were, in effect, deliberately "cooking the books," but rather that, in attempting to record the justification for their action after the fact, they came to realize how confused were their perceptions of what that justification was.

From the overall evidence, it would appear that the intended policy of "preferential treatment" for alternates probably had three objectives: (1) to fill vacancies if a successful candidate declined appointment (2) to fill new vacancies created by unexpected retirements, resignations, death etc., prior to the next hiring session and (3) to notify alternates from the last session of the date of the next tests. However, it seems that in 1986 no one in authority had any clearly defined understanding of what that policy really was. For instance, in May 1986, Gayder met with Moody and Parkhouse about the Force being under-strength between hiring periods. He recorded in his notes, "Hiring of three officers for 26 May, from old list — next three in line — O.K." This was approved by the Board. In view of this, and the third objective, it was understandable that Chief Gayder and Mr. Hanrahan had concerns about the unfairness to the August/September, 1986, alternates of proceeding with the January 1987 interviews without notification to them.

It appears that exceptions to the intended policy were not unknown to the Board. At the August/September hiring sessions, Sean Clarkson was given a qualifying mark of 80, but on re-adding the scores, it was discovered that his score should have been 79. Because he had been assessed as an outstanding candidate on his interview, with the concurrence of Mr. Hanrahan, he was re-tested on the physical part that he had failed, and received a mark of 81. Mr. Hanrahan testified that it was his understanding that such qualification would qualify him for a re-interview. He was eventually hired at a subsequent hiring session a year later, the delay apparently being due to the confusion surrounding the January, 1987 hirings. Wayne Orcutt, a provincial police officer, was included in the January 5-13, 1987 interviews. As a serving police officer, he was not required to attend Police College, and on the recommendation of Mrs. Taylor, was hired by the Board at their meeting on January 8, subject to his obtaining his discharge from the OPP. This was before the other interviews were completed, and before any list of recommended candidates had been prepared, and thus was an exception to the usual policy. It accordingly appears that the Board's reluctance to deviate from policy in relation to John Gayder was not entirely consistent with their willingness to stretch the rules to accommodate some attractive candidates.

Nevertheless, even without foreseeing the disastrous consequences of his actions, it behooved Chief Gayder to keep out of any discussions concerning the hiring sessions involving his son. On the evidence, I do not believe that Gayder deliberately misled the Monitoring Committee as alleged in the charges against him, although I accept the fact that some of the persons present, after several weeks of discussion and vacillation, concluded that Gayder had stated that there was some commitment to the alternates to interview without further testing. Gayder's involvement in the discussion about alternates, and his articulated concern that they were not being included in the new hiring procedures, followed by his statement that his son was one of them, created a situation in which his intervention became suspect. No one is clear about what was said about hiring policies in the hubbub that followed, and it is probable that neither Gayder nor Keighan really understood the substance of their exchange about commitments to alternates. If Force policy regarding the treatment of alternates was vague, it was up to Gayder as Chief to arrange for its clarification by way of written policy for future hiring sessions, but he should have left it to others on his staff to assist the Board in correcting the perceived unfairness to the August/September alternates.

It should have been apparent to any person attending the December 22, 1986, Monitoring Committee meeting that no significant (let alone major) decisions could safely be made relying on anyone's interpretation of what Gayder had said or what instructions were given to him at that meeting. Quite apart from the equivocal and confused oral evidence of those present as to what was decided during the "heated discussion," the documentary evidence reveals the fuzziness of everyone's recollection. Asked what was meant by the term "heated discussion," Mrs. Wilcox said "raised voices, tempers flaring, talking over one another, interrupting." This, she said, referred to the members, not to Gayder or Shoveller.

The minutes of the January 15, 1987, "confidential" Board meeting refer to the general disagreement as to what, *if any*, (my emphasis) recommendations resulted from the December 22 meeting. Mrs. Taylor sat in as monitor at the hiring interviews of January 5 and January 26, at both of which John Gayder was interviewed, and she, at that stage, apparently did not recall that there had been instructions that only those with marks over 83 (which, she was presumably aware of from the December 22 meeting, would have excluded John Gayder) would qualify for an interview. If the events of the December 22 meeting were at all clear in her mind on January 5, she would surely have objected, as Deputy Chief Shoveller did, to the inclusion of persons with less than a qualifying mark of 83. It took more than seven weeks and at least six or seven very contradictory revisions of the draft minutes of the December 22 meeting, before reluctant agreement could be obtained as to what the Monitoring Committee members thought had actually transpired. Gayder, on the other hand, had only a few days to carry out the instructions he thought he had received as to the inclusion of the September 1986 alternates in the January 1987 hiring interviews. It would not be unnatural if his interpretation of the confused discussions was coloured by his interest in having his son's name included in the list of interviewees, just as the Board's discussions after February 5 as to what should go in the minutes were probably coloured by its interest in supporting its February 5 decision to suspend Gayder and pursue *Police Act* charges against him.

If the Board had seen fit to admonish or reprimand Chief Gayder for what it perceived to be a distortion of hiring policies affecting his son, that would be understandable. However, the suspension of a Chief of Police, and the laying of charges against him, with all the inevitable adverse repercussions in the media, the public and the Force, is one of the most momentous decisions a Board of Police Commissioners can make. Only incontestably proven conduct would seem to justify such a course of action, and then only after all alternatives had been explored. It is apparent that at least some members of the Board were not happy with Chief Gayder and his administrative style, but, as Mr Hanrahan pointed out to Mrs. Taylor, Gayder would become eligible for retirement on June 24, 1988. If they wished to get rid of him, unless his conduct was so demonstrably serious as to be detrimental to the well-being of the Force (and I am far from satisfied that the Board had such proof), the prudent and pragmatic course would have been to await that likely solution. Had that course been followed, the IIT, which came to many unwarranted conclusions and created much adverse publicity and many harmful rumours, would never have been formed, and it is doubtful that this Inquiry itself would ever have been required.

(3) Analysis of the NRPF hiring and promotion process

The confusion surrounding the 1986-87 hirings described above, and which were the subject of some three weeks of hearings, is an example of the problems involving the hiring practices of the Force. As well, suspicions as to the integrity of the promotional processes were frequently voiced during the course of the Inquiry investigations. The subject of the promotional processes employed by the Force and how they are perceived figured largely in the Commission's examination of the morale of members of the Force.[3] In this section, I shall attempt to deal, not with any particular situation, but rather with the procedures which the Force utilizes to hire and promote its members.

In police organizations as much as 90 per cent of their annual operating budget is expended on wages and fringe benefits. Besides this very considerable absolute cost to the public, the human resources of a police force are, far and away, its most significant asset for the delivery of efficient and effective police service to the community. Therefore, the management of this resource is of paramount importance. A basic principle of any police force must be to maximize the potential effectiveness of its complement of personnel. Failure to do so can have far-reaching implications for virtually every facet of the organization, ranging from internal problems, such as low productivity and morale, to external pressures like negative media coverage, diminished public support and severe adverse scrutiny from political representatives.

Sound hiring and promotion decisions are central to the human resources management process in any organization and the NRPF is no exception. Whenever personnel selection methods result in superior performers being hired or promoted, literally millions of dollars in benefit to the force can accrue in increased productivity, better service and improved employee satisfaction. In short, there are compelling reasons to draw upon available proven selection methods to ensure that the best possible hiring and promotion decisions are taken and accordingly be able to defend the rationale for those decisions.

(a) Hiring

The criteria for hiring police officers are prescribed in section 43 of the *Police Services Act*, but their specific application is administered by individual police forces. Requirements include being a citizen or permanent resident of Canada, 18 years of age or older, physically and mentally fit, good moral character, and at least four years of secondary school. Basic qualifications for the NRPF differ little from other Canadian forces and they include the above, plus possession of a valid driving licence and corrected visual acuity of 20/30 with normal colour vision.

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[3] See Part IV.

In the past, the Force relied exclusively on interested members of the public "walking in" to apply for employment, but recently it has developed a recruiting video and begun promoting police careers through presentations to local organizations including educational institutions. In any event, the Force has never had difficulty attracting large numbers of applicants for the positions available and has, therefore, had to eliminate the great majority through a variety of selection devices.

The first step in the current selection process is a cognitive ability test. The General Aptitude Test Battery (GATB) has been introduced to replace the Otis-Lennon Mental Ability Test which had raised some concerns of cultural bias. The cut-off mark established for GATB in Niagara eliminates approximately 60-65 per cent of those tested but the results are not used to rank the passing candidates. Since cognitive ability tests have been demonstrated to be among the very best predictors of job performance it is a waste of valuable test information to treat all candidates who pass as equals. However, there is a practical problem which may compromise the reliability and validity of such tests; namely, many persistent police force applicants repeatedly undertake these tests at different forces which results in a "testing effect," that is, familiarity producing misleadingly high scores.

On the same occasion as they undergo the cognitive ability test, candidates take a 60-word spelling test and are required to write two policing-related essays which are only graded for those who pass the cognitive ability test. The pass mark on the essay test is 76 per cent and each is now scored separately by two supervisory officers using a grading sheet, although some of the qualities being evaluated such as maturity and relevance have still not been well defined. The results of both the spelling and essay tests may be considered later in the process if two or more candidates appear to be equally well qualified.

Surviving candidates are interviewed for up to an hour by what is known as the Fine Screen Panel, comprised of the recruiting sergeant and two staff sergeants. This interview probes the candidate's personal history, interests and attitudes to enable an assessment to be made as to his/her acceptability. However, the judgement made tends to be a global one as to the "fit" of the candidate and some wrong answers may in themselves preclude further processing. Information elicited may be verified during the next phase of the selection process which involves an investigation of the candidate's background including information gathering from references and former employers. Given the enormous public trust placed in police officers, thorough background checks are not only justified, but they provide an obvious and reliable source of information as to a candidate's character and suitability. In the past, some of these labour-intensive checks have been rather cursory and persons such as neighbours, who have potentially observed an applicant's behaviour over an extended period of time, have not been interviewed.

Following success at the Fine Screen Panel, but prior to the background investigation, applicants must attain 60 per cent to pass the physical fitness test set by the Ontario Police College. Gender and age are factored into the test requirements, which include a one and one-half mile run, pushups, sit-ups and a flexibility test. Undoubtedly, a degree of physical fitness is a bona fide occupational requirement for police officers. The test adopted is simply the standard required by the Ontario Police College. It is appropriate that a simple pass in the test permits a candidate to continue in the process, as opposed to the previous practice of allotting 50 per cent of the qualification mark, for the final selection interview, to the physical test. If an applicant's physical test indicates he/she is sufficiently fit to perform his/her duties as a police officer, it does not seem appropriate to grant him/her a higher standing because he/she can run farther or faster than other candidates.

The final stage in the process is an interview by the Selection Board, comprised of two senior officers and chaired by a deputy chief. While candidates' points do not accumulate as they pass through the system, test scores, as well as a synopsis of their performance to date, are available to this Board. This interview, like that of the Fine Screen Panel, is structured, in that the questions are pre-planned and candidates are asked the same basic questions. However, the interviews lack structure insofar as the traits, personal attributes or skills sought have not been defined through job analysis, which would allow the development of questions designed to reveal the candidates' job-related skills and abilities. Consequently, standards may inadvertently vary between different interviews and amongst interviewers. This deficiency should be remedied as soon as possible since well-developed structured interviews that are based on a thorough job analysis, and in which specific types of questions are designed to assess job-related skills and abilities, are among the most reliable and valid predictors of job performance.

The Selection Board ranks the candidates and, as vacancies occur, their names may be placed before the Board, which must approve any hiring. In Niagara, as we have already seen, the Police Services Board has, in the recent past, been more involved in hiring issues than is typical. The Board established a Monitoring Committee, with respect to hiring, and a member was designated to observe Selection Board interviews following a newspaper story in August 1986, which became known as the "nepotism article." Although the body of this article did not mention the word nepotism it did purport to illustrate that many members of the Force had relatives also working for the Force. In many respects the presentation of the data in the article was misleading, for instance, by the inclusion of relationships formed by marriage after the parties had joined the Force. Nonetheless, it had the effect of raising concerns about the perception that the Force favoured the hiring of relatives over members of the general public. Furthermore, as numerical data is not available on this topic for comparable Ontario police forces, the statistics cannot be put in context. Even if the NRPF figures on "relatedness" are inordinately high (and there is no evidence to suggest they are), it would be both unfair and probably unlawful to prohibit relatives from being hired by the Force. In the final analysis, the best safeguard against the inference that favouritism is being shown is the adoption of sound selection procedures which are uniformly applied to all candidates.

Over one-quarter of the employees of the NRPF are civilians who perform a broad range of roles in the organization, including a number who occupy senior positions. The filling of any permanent civilian position on the Force, with the exception of Chief Administrative Officer (CAO), is subject to the provisions of either the Senior Officers' or the Police Association Collective Agreement.

Whenever a civilian vacancy occurs the position is posted, indicating the duties, qualifications etcetera, and any permanent employee of the Force may apply. For civilian senior officer positions there is a provision to simply appoint a candidate, but usually a similar selection process to that governing the other approximately 95 per cent of civilian positions is followed. For positions governed by the Police Association Collective Agreement, job requirements such as typing are tested and all successful candidates are interviewed by a panel comprised of two members of the involved unit and chaired by the personnel supervisor. Once again these interviews are relatively structured in that all candidates are asked the same pre-set job-related questions. For other than senior officer positions a Police Association observer is present; seniority is used to separate equal candidates and the process is subject to the grievance provisions of the Collective Agreement. Should a position not be filled by a permanent employee, (that is, there are no applicants or none are qualified), then the competition is opened to the Force's pool of temporary employees and/or the general public.

The Force utilizes temporary employees on both a full-time and part-time basis to replace permanent employees absent due to illness or vacation, as well as for such special projects as backlog reduction. The Force maintains an inventory, by job type, of members of the public who have contacted the Force to seek employment. Generally, persons from this inventory are invited to apply for temporary assignments as the need arises and those who prove satisfactory form the pool from which the majority of permanent openings are filled. Recruiting methods, such as newspaper advertising, are required only infrequently, usually to fill relatively specialized job functions.

(b) Promotion

The rank hierarchy of police officers in the NRPF is taken from the *Police Services Act*, namely, constable, sergeant, staff sergeant, inspector, superintendent, staff superintendent, deputy chief and chief. Generally, promotions in Niagara, like most other Ontario forces, are to rank, not position, and opportunity for promotion is dependent on openings occurring in the authorized strength of the Force. Unfortunately, the demographics of most police forces, including Niagara, are such that the majority of officers are unlikely to be promoted during their careers. Furthermore, virtually all constables aspire to at least one promotion and inevitably experience profound disappointment when this is not achieved. The negative consequences are many, including low morale among the rank-and-file and relentless clamouring for changes in the promotional system. Often, senior management, as is the case in Niagara, feels compelled to repeatedly review its promotional processes in response to Force members' criticisms.

The NRPF's present promotional system was devised by a committee comprised of various ranks with Police Association representation and member input during 1988, and was scheduled for similar review again in 1989. As indicated later, I understand this review is to be carried out by consultants.

The current procedure, which governs promotion to the ranks of sergeant, staff sergeant and inspector, received the approval of the Board and was issued by the Chief in September, 1988. The system is essentially similar for the three ranks. The basic eligibility requirements, service of four years as constable and two years as sergeant and staff sergeant, and a 70 per cent pass in the Force's Policy and Procedure Examination and the applicable Ontario Police College examination (with 65 per cent minimum in each category), qualify a candidate for five years.

Constables and sergeants are evaluated on job performance and promotion potential by a Promotion Evaluation Board, appointed by the divisional commander, comprised of three supervisors, including, where possible, the candidate's immediate supervisor. Using a standardized five-point rating form, several aspects of job performance and promotion potential are scored, as well as a recommendation for promotion indicated by each evaluator, and the scores are averaged. The top 40 per cent of constables and the top 50 per cent of sergeants proceed to the Divisional Review Board composed of two senior officers appointed by the divisional commander.

Using a standard form, the Divisional Review Board reviews the previous Board's evaluations, as well as each candidate's personnel file and résumé. A narrative and numerical assessment is produced along with a recommendation for promotion. The scores are averaged and the top 40 per cent of constables and top 50 per cent of sergeants recommended by all divisions proceed to the Chief's Oral Board, composed of four previously uninvolved senior officers.

The Oral Board reviews the previous Board's evaluations and each candidate's career history file, personal evaluations and résumé and conducts an interview. Again, using a standard form, Board members complete a narrative and numerical assessment of each candidate, and make a recommendation for promotion. In an effort to reduce the possibility of favouritism or bias, the highest and lowest scores are discarded, the remaining two averaged and the candidates listed in numerical order of merit for submission to the Police Services Board by the Chief as promotions are required.

Eligible staff sergeants, seeking promotion to inspector, undergo a somewhat different process. At the outset, a narrative assessment, including a recommendation for promotion, is prepared by the Promotional Evaluation Board comprised only of an inspector, usually the applicant's immediate supervisor. Recommended candidates are assessed by an Oral Board consisting of four previously uninvolved senior officers, who review each narrative evaluation, career history file, personal evaluation, and résumé, and conduct an interview using a standard form. The highest and lowest scores are discarded, the remaining two averaged, a recommendation for promotion made and two recommended candidates for every vacancy, or at least six with the highest scores, proceed to the Chief's Board. At this Board, the Chief and two designated senior officers, usually the Deputy Chiefs, review the candidate's previous documentation, including the Oral Board's evaluation, conduct an interview and make a recommendation for promotion using a standard form. A rank-ordered list of successful candidates is forwarded to the Police Services Board for approval and, in recent years, a further interview is conducted by that body.

Candidates may elect to have a Police Association representative present during the interview process. They are advised of their scores and the final rankings are posted to reduce the perception that it is a secret process. The Chief Administrative Officer is responsible for many of the mechanical steps required in the process including the calculation of all average scores and the ranking of candidates.

Promotion beyond the rank of inspector is not governed by a formal written procedure and involves a considerably less structured process. Inspectors may apply to become a superintendent or staff superintendent by submitting a résumé, which is considered along with their annual performance appraisal and related information prior to an interview by the Chief and two Deputy Chiefs. A rank-ordered list of successful candidates is forwarded for ratification to the Police Services Board, which in recent years has interviewed each candidate in the presence of the Chief, who is available to provide any required information.

As previously indicated, in Canadian police forces there is almost universal promotion aspiration that far exceeds promotion availability, which in turn results in widespread dissatisfaction. As might be expected, this Commission's examination of morale in the NRPF identified promotion as being a contentious issue. Furthermore, it would appear that the Force's unique history has resulted in factors such as perceived factionalism and favouritism exacerbating a generally perplexing occupational problem. Unless a professionally developed promotion system is introduced, which is not only fair, but seen to be fair, high levels of dissatisfaction will persist, to the detriment of the organization's effectiveness.

I understand that the Board has recently engaged Dr. Coutts and Dr. McGinnis, the highly regarded consultants who were retained by the Commission, and whose workshop report was of great assistance to me in the preparation of this report, to develop a promotional system for the Niagara Force. The Board is to be commended for this progressive step, but as I point out below, it seems to be needless duplication and expense for individual forces to be put to the very considerable expense for the preparation of a system that could be adapted to all forces. However, until such a system is made available, each force must design its own.

Undoubtedly, conditions peculiar to the NRPF led to certain subjects being specifically included in the terms of reference of this Inquiry. In most cases the connection between the subject area and unhappy results is readily apparent, as is the case with hiring. While some specific occurrences will be examined in detail in other chapters of this report, there are what might be described as systemic issues, underlying many of the subjects in the terms of reference, which have a provincial or even national dimension. Hiring practices and promotional processes are examples of subject areas which have long represented a challenge to police forces throughout Ontario, if not Canada.

Historically in Ontario, individual police forces have, within the broad framework prescribed by provincial legislation, largely been left to their own devices to develop and administer their own hiring and promotional systems. While police governing bodies are technically responsible for all hiring and promotion, their involvement, except for the most senior positions, has generally been limited to confirming the recommendations of the Chief of Police. The Ministry of the Solicitor General provides training for personnel officers, assistance with respect to senior appointments and makes promotional examinations available to police forces.

At the municipal level, the efforts of many police organizations in the hiring and promotion fields has been commendable, particularly in light of available resources. Nonetheless, a great deal of energy has been expended by forces repeatedly refining their systems independently of each other in pursuit of that seemingly elusive ideal. In many cases, promotion systems are amended, often radically, every time selections are required. Similarly, the mostly in-house recruiting and hiring practices have failed to attract and select sufficient minorities and women to enable police forces to reflect the composition of the communities they serve. Vacancies are being filled, but state-of-the-art techniques, which increase the probability of selecting superior performers, are either not being employed or are not applied appropriately. The net effect is that individual police forces are engaged in a seemingly endless tinkering with their selection systems in a genuine effort to better their hiring and promotion decisions, resulting in confusion and frustration within and without. The NRPF's experience is typical of this pattern.

The time for a concerted, coordinated scientific approach to both the hiring and promotion issues is long overdue. Furthermore, in doing so it must be recognized that those issues cannot properly be addressed in isolation from other components essential to a cohesive, sound, and effective human resources management system such as job analysis, performance appraisal, career development and succession planning.

The development and implementation of selection methods of scientifically proven reliability and validity can be an arduous, time-consuming and expensive task even for experienced human resources practitioners. However, the cost not only in dollars but in potential ill-will from both within and without the organization, makes it imperative that selection methods employed by police forces conform to the highest possible professional standards. Many police forces in Ontario simply could not afford to independently obtain the expertise to develop such systems and, even if they could, not only would some inconsistencies remain, but each would be "reinventing the wheel" at public expense. As pointed out above, this costly process has already begun in Niagara. This Commission had the consultants mentioned earlier describe and assess the reliability and validity of various alternative methods which could be introduced into the hiring and promotional selection processes. Notwithstanding this information, or perhaps because of it, I would not feel competent to design and recommend specific processes, which utilize the best methods and, of equal importance, the appropriate combination of them. Therefore, I am convinced it would be entirely consistent with the present mandate of the Ministry of the Solicitor General, Policing Services Division, to considerably expand and enhance its role with respect to the development and implementation of sound hiring and promotional systems by all Ontario police forces.

This is particularly opportune in light of the Ministry's endorsement of the report of the Race Relations and Policing Task Force in 1989, which put forward numerous recommendations with respect to the staffing of police forces, including increased Ministry involvement in many facets of their human resources management. Furthermore, since the proclamation of the *Police Services Act* the Ministry has been actively involved with police forces in the implementation of the employment equity provisions of the legislation. In accordance with section 48 of the *Act*, as well as Ministry guidelines, a committee of the NRPF is developing an employment equity plan which is intended to increase the representation of four target groups on the Force; namely, women, visible minorities, natives and the handicapped. The committee, chaired by Deputy Chief Parkhouse, has Board and NRPA representation and has prepared a plan which has been submitted to the Solicitor General for approval.

It would be a logical extension of the Ministry's current and contemplated leadership role to comprehensively embrace all aspects of human resources management by police forces, instead of confining itself to specific narrow program priorities. I will be making a recommendation in this regard.

2 PROPERTY

(A) STORAGE AND DISPOSAL OF PROPERTY

(1) The regulations

As mentioned in the introduction to this report, six briefs, averaging about 120 pages each, were submitted by the IIT to the department of the Attorney General in June, 1987. The briefs set out what the IIT considered was evidence of wrongdoing on the part of ex-Chief Gayder relating to a series of occurrences, and asked the Attorney General's advice as to whether each occurrence constituted a criminal offence. Most of the situations involved the possession by Gayder of various handguns and other property of third persons that had allegedly come into possession of the NRPF as a result of seizures or voluntary surrenders.

The Attorney General's staff advised that there were not sufficient grounds to support criminal charges, and it was presumably the angry reaction of the IIT and the Board that prompted the inclusion of term of reference N°. 2, namely to inquire into and report upon "the storage and disposal of all property seized or otherwise coming into the possession of the Force during the discharge of its responsibilities, with particular emphasis on the storage and disposal of firearms." It is this term I now address.

Property of third persons can come into the possession of the Force in a variety of ways, the most common of which are:

(1) Property seized by a member of the Force in the course of an investigation.

(2) Property found by a Force member.

(3) Property found by a private citizen and turned over to a Force member.

(4) Property voluntarily turned over to a Force member by the owner thereof or by the estate or relative of the deceased owner.

(5) Property (usually a weapon) obtained by a Force member during the investigation of a suicide.

(6) Property obtained during investigation of a domestic dispute where no charges are laid.

This list is not exhaustive, but does underline the complexity of the legal problems that may arise concerning the proper method of disposing of such property. The answers can be as different as the ways in which the property came into the Force's possession.

The answers to some of the situations most frequently encountered at the time of the events considered by this Inquiry, based on the law as it was until passage of the *Police Services Act* in 1989, appear to be as follows:

(1) Property seized by a police officer under a warrant in order to obtain evidence during an investigation must, in due course, be returned to the owner.

(2) Stolen property which is recovered by the police must be returned to the owner, but if the owner cannot be located, it may be sold as set out in paragraph (3).

(3) Found property must be returned to the owner if the owner can be located. If the owner cannot be located, the property must be returned to the finders unless they have expressly abandoned any claim to it. If the finders have abandoned their claim, or if the finder was a police officer, the property may be sold by the Force with the approval of the Board of Commissioners of Police, and the proceeds may be retained by the Board under the provisions of section 18 of the *Police Act*.

(4) Property (such as a weapon) that is voluntarily turned in by an owner or the relative or estate of a deceased owner, and who has abandoned all claim to it, will be treated in the same manner as found property whose owner cannot be located.

(5) Property obtained during the investigation of a suicide must be returned to the deceased's estate unless any claim to it is abandoned by the estate, in which case it will be treated in the same manner as found property whose finder has abandoned all claims.

(6) Property voluntarily turned over to police who attend on a domestic dispute is held on a voluntary bailment, and not under any statutory

authority, and therefore must, in due course, be returned to the owner unless all claim to it has been expressly abandoned.

Since its passage in 1989, the *Police Services Act* has amended and simplified the above provisions.

(1) All found, stolen or seized property, other than firearms or money, must be returned to the owner, but where the owner cannot be located and the property is not subject to a court order as to disposition, section 132 (2) provides that "the chief of police may cause the property to be sold and the Board may use the proceeds for any purpose that it considers in the public interest." There is no provision for returning the property itself to the finder, although presumably the Board could conclude that it was in the public interest to give the proceeds to the finder. The common law provides that the finder of property is entitled to possession of it subject only to the rights of the true owner. A decision of the Ontario Court of Appeal, confirming the common law, states that where a finder turns in found property to the police and the police do not locate the true owner, the property must be returned to the finder.[1]

It would be desirable to clarify the statutory provision, since, although the direction to the Chief to sell is permissive rather than mandatory, it appears to be in conflict with the common law without specifically overruling it. However, it should be kept in mind that there is always the danger that a thief may use the "finder's-keeper's" law to "launder" stolen items by turning them in to the police as found property after removing all identification marks, and then claiming their return to him as finder when the owner cannot be located. This particularly applies to articles such as bicycles which are hard to identify. I shall recommend a clarification of the legislation so that the statute conforms to the common law, but it should allow the Chief or the Board a discretion to refuse to return the property to a finder whom he suspects, on reasonable grounds, of illegal conduct.

(2) Found, stolen or seized money is to be held for three months, and if the owner has not claimed it, the Board may use it for any purpose it considers "in the public interest." Again, there is no requirement that found money that is unclaimed be returned to the finder.

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[1] *Bird v. The Town of Fort Frances (1949) O.R. 292.*

(3) Firearms found, stolen, seized, or forfeited on a prosecution are to be returned to the owner if there is a court order or other legal requirement to that effect. Otherwise, the Chief shall ensure that they are "destroyed promptly," unless the Chief considers a firearm to be unique, antique or of educational or historic value, in which case the Chief shall notify the director of the Centre of Forensic Sciences, who then has three months to request it be sent to the centre for its collection. Failing such request within three months of the notice, the firearm shall be destroyed unless the Chief obtains the approval of the Solicitor General for "some other method of disposal." A report is to be filed with the Ontario Civilian Commission on Police Services before January 31 in each year listing the firearms that have come into the possession of the Force during the preceding calendar year with particulars of the disposition of each one.

Had these provisions been in force at the time of the acquisition of the firearms that have formed a significant part of this Inquiry, many of the suspicions, rumours and allegations that plagued the NRPF would probably never have originated.

It should be noted that the disposition of property seized under a search warrant is not governed by section 132 of the *Police Services Act*, but by the relevant provisions of the statute (usually the *Criminal Code*) under which it was seized. These vary according to the nature of the property and the manner of seizure. For example, a firearm seized pursuant to a search warrant under section 103 of the *Criminal Code* must be taken before a provincial court judge and dealt with as the judge directs.[2] Once the relevant judicial proceedings are finished, or if no proceedings are commenced within a reasonable time, if the persons from whom the firearm was seized are entitled to lawful possession, it must be returned to them; if there are other persons who are the lawful owners, it must be returned to those owners; if neither is the case, the judge may order that it be forfeited to the Crown, and disposed of as the Attorney General directs, "or otherwise dealt with in accordance with the law."

However, if a firearm is seized pursuant to section 102 (rather than under the search warrant provision above) and the registered owner cannot be found, the peace officer must take it before a provincial court judge who may declare it to be forfeited to the Crown, to be disposed of as the Attorney General directs. Since the interpretation section of the *Criminal Code* provides that Attorney General means the Attorney General or the Solicitor General of a province, there would appear to be no conflict with the policy of the Ontario *Police Services Act*. On the other hand, if a firearm is seized under section 101 of the *Code* (commission of an offence relating to prohibited or restricted weapons etc.), it must be dealt with in accordance with sections 490 and 491 of the *Code*.

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[2] s. 103 sets out the variety of orders the justice may make.

It is easy to understand that a police officer might have difficulty, without expert assistance, in finding the proper path through this legalistic jungle, particularly as it existed from at least the 1950s through to 1989, the period during which the privately-held firearms relevant to this Inquiry were acquired, and this becomes relevant in assessing possible misconduct on the part of someone who did not follow the correct legal fork in the road. An examination of Force policy between 1972 and 1987 indicates that expert assistance was not utilized by the Force or the Board. For example, Routine Order N°. 28/72, the first Force order dealing with "Storage and Disposal of Found and Seized Property," provides that found property will be returned to the owner as soon as possible; if the owner cannot be located the property is to be held by the detachment property officer, and, failing location of the owner within a further period of three months, it is to be returned to the finder. However, bicycles and firearms were expressly exempted from this provision, and were to be disposed of in accordance with the provisions of the *Police Act*; that is by sale, subject to the approval of the Board.

This policy, as it relates to bicycles and firearms, is, as we have seen, contrary to law, but presumably would have appeared to members of the Force to be a lawful order. Although the Routine Order was amended in many respects between 1972 and 1987, this part remained unchanged until after this Inquiry commenced.

The same order provided that a copy of the property tag was to remain with the property until disposal, the property being stored with the property officer of the division or detachment in which it had been seized or found. It further provided that "the Administration Branch" was responsible for disposal of all unclaimed property. Evidence was that this referred to the Property Branch, generally known as "Supply." This provision remained in force through to 1987.

On September 24, 1974, the Divisional Commander of N°. 3 Division (Welland) sent an order to all ranks of that division, warning that no officer could retain any seized or found article in his possession, or "store them in his locker or desk or otherwise control them." A copy of this order was sent to James Gayder, who testified that he agreed with the order.

In 1982, a similar warning was brought to the attention of Force members by Bulletin 13/82 which provided:

(1) All property must enter the property system either as found or seized.

(2) No officer shall retain possession of, or store, any item of property outside the property system.

(3) Members of the Force cannot claim any property which has been entered into the Force property system, regardless of reason.

This policy remained in force until 1987.

(2) The facilities

The facilities, or lack of them, for the storage and recording of Force property, and of non-Force property such as seized items retained as court exhibits, are described later in this Part in the section on Quartermasters Stores.[3] For the moment, I simply point out that, from regionalization onward, and presumably even before that, these facilities have been, and still are, completely inadequate and undoubtedly contributed to the problems relating to the handling of non-Force property which, in turn resulted in many of the allegations investigated by the Commission. Recommendations in this regard are set out at the end of this Part.

(3) Weapon trades

One of the areas investigated by the IIT and one which generated much publicity both leading up to, and during this Inquiry, was the practice of trading seized, found and used firearms to suppliers of police equipment in exchange for new equipment. The IIT apparently believed that these trades had been taking place on a regular basis under the direction of Chief Gayder without the knowledge or authorization of the Board. In their brief to the Attorney General, they particularly referred to an April 17, 1980, transaction in which they concluded that 210 weapons were sold, not traded, by Gayder to Rick Smith Sports, without any record of what happened to the proceeds. In that brief, they posed the following question to the Attorney General: "Did James Gayder have the right to sell or trade confiscated weapons without the express consent of their owner (The Niagara Regional Board of Commissioners of Police) and in so doing, did he commit the offence of Theft as defined in the *Criminal Code of Canada*?" The Ministry of the Attorney General replied that it did not consider that there were reasonable grounds for laying a charge of theft. In its report to the Board, the IIT registered its strong disagreement.

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[3] See p. 87.

The evidence before the Inquiry made it clear that the practice of trading seized and found firearms and used Force weapons to equipment suppliers as an offset against the cost of new purchases had been in existence for many years, not only in the Niagara area forces, but throughout Ontario, and probably much of Canada. Items traded included seized, found, confiscated and turned-in handguns, "long guns" (rifles and shotguns), pellet guns and knives, as well as used Force handguns and "long guns." In exchange, the Force would receive police equipment such as handguns, sirens, handcuffs, and bombsuits. Evidence was produced of weapon trades in the 1960s (with indications that they occurred long before that) by both the Niagara Falls and St. Catharines municipal forces. John Wolff, of Albion Arms, was the principal supplier to the NRPF until Robert Smith took over the business in 1973. Smith stated that he continued his predecessor's practice, and accepted trade-ins of weapons from other Ontario forces, such as Kingston, North Bay, Windsor and Kitchener.

Following the 1971 amalgamation, trades took place every 12 to 15 months. At first, Chief Shennan was the principal contact with the suppliers, then, in 1973, Inspector Ronald Bevan took over this responsibility. When a trade was planned, Gayder, who at that time was Deputy Chief (Administration), would evaluate the weapons on behalf of the Force. At the time of the trade, Robert Smith would submit his own evaluation, and he and Gayder would negotiate a figure to be included by Bevan as a credit in the purchase order. The value of these credits ranged between $2,000 and $6,000 per trade. The main value lay in the "long guns" and a few better quality handguns. Most of the confiscated guns were of a very cheap type, referred to as "Saturday Night Specials," worth, as Smith put it, "$5 if they clicked, $2 if they didn't," and were used mainly for parts. Only credits were received, and no money was ever received from the dealer. Pellet guns, air rifles and knives were transferred to Albion Arms just to get rid of them, without any value being allowed.

Albion Arms went out of business in 1979 when a change in gun legislation made the business no longer profitable, but Robert Smith's brother Rick carried on a sporting goods business under the name Rick Smith Sports, and did a limited business in firearms. Following the closing of Albion Arms, the only further trade of seized and found weapons was made on April 17, 1980, to Rick Smith Sports, in exchange for a "bomb-suit," and thereafter such trades ceased. Trades of used Force weapons (not seized or found guns) apparently continued until the passage of the *Police Services Act* in 1989. Section 134 of that *Act* now prohibits the practice.

On at least two occasions, guns seized by the Force and identified as having been stolen from a registered owner were traded without the owner's consent. In one case, a gun registered to a Niagara citizen, which had been stolen from the citizen's home without his knowledge, was recovered by the Force on May 16, 1978, and a record search revealed the name of the owner. Due to inadequate follow-up, the owner was not notified. About a year later, the owner discovered the gun was missing, and reported it to the Force, but apparently no one checked to see if it had been recovered, and it was included in the April 17, 1980, trade to Rick Smith Sports in exchange for the bombsuit. Later, someone tried to register the gun in New Brunswick, and a routine RCMP check revealed its history. This resulted in the NRPF having to buy the gun back and return it to the owner.

In another incident, two guns registered to another Niagara citizen were stolen on June 16, 1976, and the theft was reported to the Force. On July 18, 1976, one of the stolen guns was recovered by the Force as a result of an arrest following an armed robbery. Again, inadequate follow-up resulted in the owner not being notified, in spite of his report of the theft only a few weeks earlier. The mistake was revealed by a subsequent internal audit, the Complaints Bureau was notified and its investigation revealed what had happened, but still no one notified the owner. During the Inquiry investigation, the owner was contacted, and he gave evidence at the Inquiry. He stated he still wanted his gun returned, and that being impractical, the Force paid him the value of the gun.

It is apparent that the Force had problems with its property system, particularly in relation to returning identified guns to owners after they were used as exhibits in court. This was not created by the practice of gun trading, since the result for the owners would have been the same had the guns been destroyed.

There is no evidence of any deliberate impropriety with respect to the practice of trading firearms for police equipment, and the Board of Police Commissioners was aware of the practice and received reports thereon. However, the practice resulted in a revenue of only $2,000 to $6,000 a year, an amount relatively insignificant in a budget that runs into the tens of millions of dollars, and not worth giving the impression that the Force was insensitive to the risk that traded weapons might become available for purchase by criminals. Fortunately, as already mentioned, the problem has now been eliminated by the provisions of the *Police Services Act*.

(B) HANDGUNS REGISTERED TO JAMES GAYDER

When closet 374 was opened on February 23, 1987, an inventory disclosed that it contained 136 handguns, a number of rifles and shotguns, and several hundred knives such as switchblades, ordinary kitchen knives, butcher knives, pen knives, martial arts weapons, and police records and documents.

It was well known that Gayder was a collector of guns, mainly handguns. Sixty-one handguns and one M-1 carbine were registered in his name. Twenty-six of these handguns were located in closet 374. Of the total of 61 handguns registered to Gayder, 60 registrations were conversions from the old Fanfold system which came into existence around July, 1950, and was administered by the RCMP. Conversion to a single certificate system (a separate certificate for each gun) began in 1969 and was completed in 1971. Accordingly, 60 of the handguns registered to Gayder must have been acquired by him prior to 1971. The remaining handgun, a .22 calibre Frontier Scout, referred to as the "Lamonte gun," was registered to Gayder on September 26, 1974. This was the last handgun registered to Gayder. The M-1 carbine was registered to him on March 19, 1979. There was no legal requirement to register such a weapon until January 1, 1979.

Because of the allegations of impropriety contained in the IIT reports and rumours circulating both within and outside the Force, it was necessary for the Commission to inquire into the history of the Gayder guns.

(1) Guns received from Chief Brown

The OPC had investigated Gayder's gun collection in 1984. Gayder told the OPC investigators on July 6, 1984 that 25 of the guns registered to him had been given to him by then-Chief Brown. Brown was Chief of the St. Catharines Force from 1950 to 1959, and is now deceased. Fourteen of these guns were found in closet 374. Gayder does not know where Brown obtained the guns and it seems probable, in view of what appears to have been the very loose practice at that time, that they came into his possession as a result of seizures, voluntary turn-ins or as found weapons. Counsel for Gayder submits that there was no policy or legislation at that time regarding such guns, and that it was not considered illegal or contrary to policy to accept guns under such circumstances; if the donor was the Chief, one did not question their origin, but assumed that there was no problem without really thinking about it. Although it had no foundation in law, this concept that the Chief was the **Chief** and had the authority to take such action appears to have been accepted without question in those days, if, in fact, any real thought was given to the matter. It is easy to lose sight of the fact that the era in question is the 1950s and 1960s. The casual attitude toward guns at that time may be difficult for recent generations to understand. Many war veterans had returned from overseas with souvenir handguns, registration requirements were not strictly followed or enforced, and gun crimes were infrequent. As one of the OPC investigators told the IIT, and repeated in his evidence before the Inquiry, in those days practically every Crown Attorney, detective sergeant or police chief had at least one firearm hanging on his office wall as a souvenir. Apparently at that time the source of the gun was not considered of any great importance. I will comment on this attitude later in relation to the Welland guns.

(2) Guns received from Chief Shennan

Gayder told the OPC investigators, and repeated before the Inquiry, that six of the guns registered in his name were given to him by then-Chief Shennan, and that Shennan personally detested firearms. In the absence of any evidence to the contrary, it is assumed that their origin was the same as the Chief Brown guns, and accordingly, the same considerations would apply.

(3) Guns received from James Gayder's grandfather and uncle Jack

Gayder told the OPC, and confirmed in his Inquiry testimony, that he was given two of the guns registered to him by his grandfather, and one by his uncle, Jack McGlashan.

(4) Guns previously registered in the names of third parties unknown to James Gayder

Certificates of seven of the guns registered to Gayder showed the previous owner as a name unknown to Gayder and he stated that they must have been given to him by other police officers. One of these was the Munson gun which Gayder testified was given to him by Walsh.[4] Another one, previously registered to one Moore of R.R.1 Welland, could also be one of those obtained from Walsh.

Since there is no evidence that the other five were obtained under the authority of a "Chief," they are not in the same category as the "Brown" and "Shennan" guns, and presumably were acquired by Gayder in the 1950s or 1960s as seized, found or turned-in weapons. My later comments on the acquisition of the Welland guns also apply to these.

(5) The Welland guns

The IIT's examination of Gayder's gun registrations following the opening of closet 374 revealed that 13 handguns registered in Gayder's name had previously been registered to the Welland Police Department. These guns were recorded on Gayder's old Fanfold, which also gave the source as the Welland Police Department. Seven of the guns were found in closet 374.

The IIT noted that the 1984 OPC report stated that Gayder had told the OPC investigators that he had obtained the Welland guns from the Welland Police Department. VanderMeer interviewed Fred Wilson, the retired Chief of the Welland Force, on August 21, 1987, and prepared a will-say for him, which he signed, which set out that he was 81 years of age, having retired as Welland Chief on December 31, 1970, at regionalization, and that he had never sold or given guns to Gayder or anyone. It added that no one had the right to give or sell Gayder seized or found guns. This will-say was forwarded to the Attorney General with the IIT brief.

The IIT brief set out the above facts briefly and stated: "By virtue of the *Regional Municipality of Niagara Act* and the *Police Act of Ontario*, Mr. Wilson did not have the authority to turn the thirteen guns over to Gayder for his personal use, and Gayder did not have the right to acquire the guns and transfer them into his own name. Considering all the circumstances pertaining to Gayder's possession of the aforementioned weapons: Does the acquisition of those fifteen [*sic*] weapons by Gayder constitute Theft, as defined in the *Criminal Code of Canada*?"

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[4] As one of the Welland guns described below.

Subsequent to the brief being sent to the Ministry of the Attorney General, it was advised that the IIT had learned that one of the guns which Gayder had identified to the OPC as having come from the Welland Department in 1971 had been stolen in Sacramento, California, in 1973, and so could not be a Welland gun.[5] Wolski, of the Crown law office, in his response on behalf of the Attorney General's Ministry, pointed out that, in the OPC's 1984 report it was stated that Walsh had told the OPC investigator that at the time of the Force's regionalization on January 1, 1971, Wilson had agreed that Gayder could take the guns and register them in his own name. Wolski contrasted this with the will-say of Wilson, and considered that the conflict undermined Wilson's statement. Referring to the California gun, Wolski stated that there was no evidence to connect Gayder with the theft, and "at its highest" Gayder would only be guilty of lying about that gun coming from Welland. He accordingly believed that there was not sufficient evidence to justify a criminal charge. The IIT roundly criticized Wolski's conclusions in its report to the Board.

As has already been seen, 20 or more years ago the attitude in relation to guns and their transfer was casual to the point of carelessness, and it is apparent from other evidence that this attitude was not confined to Gayder, but was quite general amongst police personnel, however misguided it may have been.

Due to the greatly increased incidence of gun-related deaths in the last 10 or 15 years, there has developed a public revulsion against the private ownership of guns, and what was accepted 20 or more years ago is completely unacceptable now.

There can be no doubt that in the present atmosphere it would be misconduct for a police officer to convert to his own use seized or found guns, and the new *Police Services Act* specifically provides for the proper disposition of such weapons. Since there apparently was no written policy regarding found or seized firearms prior to the 1971 regionalization in any of the Niagara Region Police Forces, nor for some time thereafter, Wolski's conclusion that there were insufficient grounds for the laying of criminal charges against Gayder in relation to firearms can be understood. It is necessary to judge Gayder's conduct in assembling his gun collection in the light of the mores of the time, and to take into account the very casual and unorganized manner in which guns were sometimes thrown into a safe, storeroom or drawer without properly recording them.

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[5] See The "California gun" Investigation, p. 233.

From regionalization forward, however, Gayder was a very senior officer, and at least part of the time was the Deputy Chief in charge of Administration, including storage and disposal of property. It was his duty to ensure that regulations were passed, and enforced, that would ensure that firearms were properly dealt with. Apparently, as noted above, the first written order in this regard was issued by a divisional commander at about the same time as Gayder was registering his last acquired handgun.[6] It appears that he let his personal hobby (Walsh referred to him as a "gun nut") and his interest in a Force museum affect his attitude towards Force policy in relation to guns, and by his casual approach to gun regulations left himself and others open to allegations and rumours that caused harm to the reputation of his Force, and contributed to the call for a public Inquiry.

Nevertheless, bearing in mind the very different standards generally accepted at the relevant times, I cannot characterize Gayder's errors in judgement as misconduct within the meaning of term 12 of the Order in Council.

Due to the provisions of the *Police Services Act*, this situation should not arise again, and the only recommendation called for is the obvious one that the provisions of section 132 of the *Act* be strictly complied with.

(6) The Lamonte gun

In December 1972, Norman Lamonte, of Fort Erie, found a .22 calibre Colt revolver in a snow bank, and turned it over to Constable Koczula at the Fort Erie Detachment of the Force. The gun and three loose rounds of ammunition were in a holster. Koczula attached to it a property tag with a tick mark in the box indicating that the finder wished to claim it should the owner not be found. The gun was unregistered, the owner was not located and the gun was sent to Supply at 68 Church Street, St. Catharines. Mr. Lamonte, in his evidence, stated that he at first asked to have the gun returned to him, but when he asked its value, he was told that it was a cheap item of little value. He then asked what normally happens to such items, and upon being told that they were melted down, he said he wanted "no part of it." He was asked at the Inquiry: "Q.– So, in 1972 when you turned the gun in, you were content to have it melted down? A.– Yes."[7] Nevertheless, the property tag continued to note that the finder wished to claim it. On September 26, 1974, the gun was registered in the name of James Gayder, and the registration states that it was obtained from Albion Arms. The gun, in its holster with the three rounds of ammunition, was found in closet 374. The property tag, no longer attached to the gun, was found in a box inside the closet. The IIT considered that the presence of the tag in the closet indicated that the gun had never been included in a gun trade, since tags were always removed and discarded when a gun was traded. Gayder told the OPC investigators in 1984 that he purchased the gun from Albion Arms. In his Inquiry evidence, he stated that, following a 1974 trade-in of weapons, including the Lamonte gun, to Bob Smith of Albion Arms, he told Smith that he would like to have that gun because he was doing a good deal of target practising and did not have a .22 handgun. He did not recall paying for it, and assumes Smith gave it to him. Robert Smith stated that police officers frequently purchased guns from him at the time of trade-ins, but he couldn't remember selling or giving a handgun to Gayder, although he "couldn't exclude the possibility."

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[6] The Lamonte gun, described below.

The IIT posed the following question to the Ministry of the Attorney General: "Considering all the circumstances pertaining to the Lamonte transaction: did James Gayder commit Theft as defined in the *Criminal Code of Canada*?" Wolski's report stated "In these circumstances there is no evidence upon which an honestly held belief can exist on reasonable and probable grounds that the element of fraudulently and without colour of right can be satisfied." The IIT report to the Board submitted that Wolski had missed the "seminal issue" of whether offences under Part 11.1 of the *Code* (presumably possession of an unregistered restricted weapon) had been committed by Gayder in registering the gun to himself without authorization, and that "colour of right" was insignificant in view of the action of conversion to Gayder's own use.

The evidence, given some 15 years after the event, is too vague to permit a finding of fact, but the documentary evidence that the registration in Gayder's name came more than a year and a half after the gun was turned in to the Force, and shortly after a trade-in of guns to Albion Arms, is consistent with Gayder's version that he received it from Robert Smith. If so, on Gayder's evidence, it probably was a gift, carrying with it the implication, and appearance, that Gayder was benefitting from the Force's business dealings with Albion Arms. Transactions between a public body and commercial dealer must be, and give the appearance of being, at arms length, and that was not the case here. I have no hesitation in concluding that it is improper for any police officer, and particularly a senior one, to accept any personal benefit from a transaction between his Force and a third party.

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[7] Inquiry transcript, vol. 13 (Dec. 7, 1988): 147-8.

(7) The Tom and Fern gun

In January 1968, as the result of a phone call, Detective William Murdoch and James Gayder, who was then-Inspector of Detectives, went to the Tom and Fern Restaurant in St. Catharines where they found three handguns, a Browning .765, a Mauser .635 and an H & R .32, in the paper dispenser in a washroom. A record search revealed that these guns were not registered. Subsequently, the H & R was registered to Murdoch on September 18, 1968, the certificate indicating that it had no prior registration and had been obtained from the St. Catharines Police Department. The Mauser was registered to James Gayder on September 3, 1968, showing no prior registration or source. The third gun, the Browning, was registered to a William Crozier Price on an unknown date and was subsequently transferred to a Gerald Patrick Roach on May 29, 1972.

Murdoch does not recall having the H & R registered to himself, but states that if he had done so, it would only have been after obtaining permission from Chief Shennan. However, he has no recollection of doing this, or of having the gun in his possession after the original seizure. Constable Melinko of the IIT questioned Murdoch on September 24, 1987, and his notes record Murdoch as saying "Gayder must have gotten these guns – why did he keep this?" Murdoch denies making such a statement.

Neither of the guns has been located, and their existence became known only through registration records. Gayder told the OPC investigators that he obtained the Mauser from Chief Shennan. In his Inquiry evidence, he stated "I just do not recall the incident as to how he gave me the firearm," but insists that he would not have kept it without Shennan's permission. Under further examination, he stated that the question of any interest of the Attorney General or of the Crown Attorney in the guns was never discussed or even considered, since at that time it was taken for granted that such seized guns were Force property, and if the Chief wanted to make a gift of such a gun to him as a Force member, he would not even consider questioning its source. He stated that he had not known that the H & R had been registered to Murdoch.

Both Mr. Price and Mr. Roach are deceased, and there is no evidence to explain how the third gun, the Browning, came to be registered to Price and then to Roach, although Gayder, in making out the General Occurrence Report (GOR) on the Tom and Fern Restaurant incident, recorded Price's name and address on the reverse side. Gayder states he has no recollection that would explain this.

The IIT posed the question to the Attorney General as to whether, on the evidence, Murdoch and Gayder committed the offences of breach of trust and theft. Wolski reported: "On the basis of the evidence an honestly held belief does not exist based on reasonable and probable grounds to substantiate this allegation. There is no evidence available to prove or disprove how Gayder acquired this weapon. There is therefore no evidence to prove that he acquired it through some fraudulant [*sic*] means." The IIT in its report to the Board submitted that there was uncontradicted evidence that Gayder obtained the weapon on January 31, 1968, and registered it in his own name, and that it was not Shennan's to sell nor Gayder's to buy, and Gayder should be presumed to have known that it was the property of the Police Board.

As is the case with so much of the evidence about gun transactions, uncertainty of recollection in relation to the events surrounding the Tom and Fern guns is blamed by the parties upon the effluxion of time. On such vague evidence given over 20 years after the events in question, I am not prepared to conclude what the true explanation is as to how the guns came to be registered in the various names. As earlier stated, by today's standards, any transfer of found guns to police officers would be improper. There is no available evidence as to the position of the Board of that day in relation to the disposal of guns, or whether it was as casual as that of the police themselves. However, under the circumstances that existed at the time of their investigation, the suspicions of the IIT can be well understood. For this Commission, the important issue is that the evidence shows what harm can be done to the image of a police force by actions giving the appearance of impropriety. As already pointed out, because of the new *Police Services Act* legislation, no recommendations are required, and all police personnel can now be assumed to be aware of their responsibilities in relation to found and seized property.

(8) The Ross guns

On January 18, 1969, as the result of a domestic dispute, the Force seized five weapons from one Alexander Ross. There were three handguns (a High Standard, a Browning, and a Dusek Duo), a Beretta shotgun, and a C.I.L. .22 rifle. Ross testified that he attended at the police station the next day to find out about the disposition of the weapons and met Gayder who at that time was an inspector with the St. Catharines Police Force. Gayder suggested to him that he should not have guns in his possession. It appears that Ross had a serious alcohol problem at that time. Ross says he told Gayder that he wanted the guns returned to him. The Register of Seized Firearms for 1961-74 contains a note, recorded by Gayder, that the three handguns were delivered to Sergeant Dawson of the Property Branch, and then sold to Nepon Enterprises. There was evidence that Dawson was a friend of Jack Nepon, the proprietor of Nepon Enterprises, also known as Jack's Army and Navy store. The "long guns" were returned to Ross on February 26, 1969, and he signed for them in the register, but did not sign for the disposition of the handguns.

Gayder does not recall ever seeing or knowing Ross, and states that he purchased the Browning and Dusek Duo from Gary Nepon. Gayder's Fanfold records the registration of these guns in his name on February 19, 1969, as a transfer from Ross, and the further sale of the Browning to one Herschel Lahey on March 24, 1969. Gayder recalls selling the gun to Lahey, a gun collector friend, for $50. The High Standard handgun was purchased by Gary Gilligan, a gun club member, at the St. Catharines Police Station, from someone he identified as Sergeant Dawson, the Registrar of Firearms (now deceased), to whom he had been referred by a fellow gun club member who was a policeman. Arrangements for registration and a carrying permit were made at that time, and the gun was registered as a direct transfer from Ross to Gilligan on February 19, 1969. Although the carrying permit was not issued until May 29, 1969, Gilligan was permitted to carry away the gun in a paper bag.

As a result of a second domestic dispute on March 30, 1969, four weapons were seized from Ross: the Beretta shotgun, the C.I.L. rifle, a Winchester shotgun and an old ceremonial sword. Ross signed the register for all four weapons on April 1, 1969, although it appears that only the Beretta and the .22 rifle were actually returned to him. Gayder made a notation in the register that the Winchester shotgun was "returned to Jack Army and Navy Apr.1/69 by Ross."

As a result of a third domestic dispute, on or just prior to June 9, 1969, five weapons were seized from Ross: the Beretta shotgun, the .22 C.I.L. rifle, a Model 900 C.I.L. rifle and two large knives. Gayder recorded in the register that the Beretta, the .22 rifle, and the two knives were "sold to Nepon Enterprises June 6/69," and that "Nepon" was the "owner" of the Model 900 C.I.L. rifle. Adjacent to each item was the signature "Gary Nepon."

No one seems to recall the circumstances surrounding these notations. It appears that, at that time, one Jack Nepon owned a company called Nepon Enterprises, which carried on a retail business as Jack's Army & Navy. The store sold sporting equipment, including handguns, shotguns and sporting rifles. Jack's son, Gary, started to work in the store in 1963 when he was 16, and continued until 1970. His brother, Bruce, also worked there.

Gary Nepon identified his signature in the Register adjacent to all five items, but has no recollection of obtaining these weapons from the Force. He does not know Ross and never loaned the Model 900 C.I.L. to him. Ross testified that he knew Gary Nepon and his brother Bruce when they worked in their father's store, and used to buy hunting and fishing equipment from them. He played poker with Bruce on one occasion. He stated that he originally received the Beretta shotgun from "Nepon" in respect of a poker debt.

Gayder testified that he purchased the Beretta (as well as the Dusek Duo and the Browning referred to above) from Gary Nepon. Nepon has known Gayder since he was a youngster (his father was a friend of Gayder) but has no recollection of selling or giving any guns to him. Jack Nepon, the father, died in 1982. The store closed at some unspecified time prior to that.

The IIT did not locate and interview Ross until after the October 15, 1987 meeting with the Attorney General's staff, and so the matter of the Ross guns was not put to the Attorney General. However, at the Inquiry the subject was vigorously pursued by several of the parties.

Once again, evidence given after the passage of more than 20 years since the events in question is so vague and equivocal that it is impossible to draw clear conclusions from it. Ross was admittedly having serious alcoholic problems in 1969, which may have resulted in faulty recollections of the events. Gary Nepon's signatures acknowledging receipt of the Beretta, the .22 rifle and "two large knives," and ownership of Ross's 900 C.I.L. rifle remain unexplained, as do the entries regarding Sergeant Dawson's sale of Ross guns to Nepon, and Gilligan's purchase from Dawson.

There are at least three possibilities: (1) That Ross voluntarily turned over the weapons to the Force, without expectation of their return because of the trouble he had had in relation to them; (2) That he turned in the weapons with the clear understanding that it was for safekeeping, expecting their return when his domestic troubles were solved, and (3) That he sold or gave them to Nepon and/or Dawson so that he would not get into trouble with them again.

As to the first possibility, no one but the Crown or the Board had a right to the guns, although, as we have seen, in those days that was not clearly understood.

In the second case, it would be grossly improper for Gayder, Dawson or Nepon to deal with them at all. However, if they were to be kept only temporarily, one would assume that, in due course, Ross would have asked for their return, and there is no evidence, even from him, that he did. He did speak of a fourth occasion, in 1971, or later, when a .765 handgun was seized from him, and he did not ask for its return on the advice of his lawyer.

The third possibility would seem to explain the sale by Dawson, and the purchase by Gayder from Nepon, although Gary Nepon does not recall it.

The whole confusing episode is another commentary on the extremely loose property policy in force in the NRPF and its predecessors in the past, and the important point for this Commission is not the assignment of blame for events occurring two decades ago, just before regionalization, but to profit from the lessons learned. Perhaps as a result of these revelations, the policy and practice has been greatly improved by Chief Shoveller, and if the Commission recommendations are implemented, the problems should not recur.

(9) The allegations of D.B.

On September 12, 1990, the Inquiry was about to adjourn to allow counsel to prepare their submissions after nearly two years of evidence, when a short adjournment was requested by Board counsel. Upon resuming, counsel for Sergeant VanderMeer, who had not attended the hearings for some time, reappeared to submit rather dramatically that Commission counsel had improperly withheld from the Commission evidence of one D.B. which would "overwhelmingly vindicate" his client in relation to suggestions that VanderMeer had spread false rumours about then-Chief Gayder. As a result, the Inquiry investigators were dispatched to investigate the allegation; extensive briefs were prepared, and D.B. and a number of other witnesses were in due course called to testify.

D.B. had been an RCMP officer from 1967 to 1978. During most of that period he worked in the Customs and Excise Section of the RCMP Niagara detachment. In the early 1970s Sergeant Gerald Ryan of the NRPF provided him with information relating to persons smuggling goods into Canada from the United States. In 1972, D.B. arranged to have Ryan officially established as an RCMP informant, so that he could receive money to pay sub-informants. According to the application, Ryan had the permission of his Chief for this operation.

Sometime in the 1970s, Ryan advised D.B. that Sergeant Ed Lake of the NRPF was smuggling goods into Canada, and rather than prosecuting, D.B. gave Lake a warning. He later learned that Lake was still smuggling, and Ken Booker, his detachment commander, advised Deputy Chief Gayder that the RCMP intended to execute a seizure. Booker testified that no attempt was made to persuade him to reconsider, and that it was apparent from the success of the operation that Lake had no warning.

A search of Lake's residence under a Customs search warrant took place on January 29, 1976, and some 64 items were seized as having been brought into Canada without payment of duty. Lake admitted his guilt. RCMP policy was that criminal charges were normally not laid unless there was a commercial aspect to the offence, which was not the instant case. D.B. was emphatic that there was no special consideration given Lake by the RCMP.

During the operation, the RCMP officers discovered in Lake's basement a large number of items they presumed were NRPF property exhibits and notified NRPF Chief Shennan. Thereafter, Staff Sergeant Ciszek of the NRPF handled the property matters, and D.B. was in charge of the customs matters. As a result of the investigation, Lake was charged under the *Police Act* with discreditable conduct and neglect of duty, and the Board elected to have the charge tried before a judge, as was permitted under the *Act*. Lake pleaded guilty and was penalized eight days' pay.

D.B. testified that he was "upset" about the outcome of the charges, because he considered the penalty to be too light and that criminal charges should have been laid, and spoke to Ryan about it. He testified that Ryan told him the reason for the light penalty was that "Sergeant Lake had something on then-Deputy Chief Gayder" and explained that, being in charge of the property unit, Lake knew that Gayder was in possession of guns that had been seized by the Force.

D.B. testified that Ryan said he would obtain documents to show he was right, and later at the RCMP office, in the presence of Ken Davidson of the NRPF, gave D.B. a brown envelope containing NRPF General Occurrence Reports (which would set out the circumstances of a seizure and are referred to as GORs) and some photocopies of gun registrations in Gayder's name. He testified that Ryan suggested that he get all Gayder's gun registrations from Ottawa and compare them to the GORs, and that they had a general discussion in which "all three of us came to the consensus that Deputy Chief Gayder was a crook."

He then obtained Gayder's gun registrations from Ottawa, compared the serial numbers with the GORs, and found 17 that matched. He testified that he made copies of the documents, gave them to Ryan, and a few days later Ryan told him that he had turned them over to his superior officer, James Moody. This was his last connection with the matter until some years after his retirement from the RCMP when Mark DeMarco introduced him to Gerry McAuliffe of the CBC. He testified that he gave copies of Gayder's gun registrations and the GORs to McAuliffe. On July 3 and 5, 1984, McAuliffe broadcast on CBC radio two stories about Gayder's gun collection.

In his interview with the Commission investigators, D.B. stated that he believed McAuliffe returned to him all the documents he had given McAuliffe, but in his evidence before the Inquiry he denied ever receiving anything back.

Having heard in April, 1989, that McAuliffe might go to jail rather than reveal the sources of information sought by the Inquiry, and knowing that he was one of the sources, D.B. approached the Commission investigators, and was interviewed by them on April 20, 1989.

In the late summer of 1990, D.B. met VanderMeer in another connection, and upon the Inquiry being mentioned, he gave VanderMeer a copy of his April 20 interview. VanderMeer then prepared a "will-say" for D.B., and it was upon this will-say that VanderMeer's counsel, Mr. Rowell, based his September 12, 1990 allegations that Commission counsel had withheld relevant evidence.

In view of the seriousness of the accusation and the publicity it engendered, I must examine the relevancy, accuracy and materiality of D.B.'s evidence.

Allegations and rumours about Gayder's gun collection made any reliable evidence about his acquisition of Force guns relevant to this Inquiry. The essence of D.B.'s evidence was that he had received from Ryan GORs which, when compared with Gayder's gun registrations, matched the serial numbers of 17 of Gayder's guns. His will-say stated that the GORs he allegedly received from Ryan were Niagara Regional Police reports. A GOR report, would, of course, be prepared at the time of the occurrence. Accordingly, if D.B.'s evidence is correct, his GORs could not have related to Gayder's guns, since all of those guns, apart from the "Lamonte" gun, were registered in Gayder's name before the creation of the NRPF. D.B.'s evidence was that he gave the gun documents to McAuliffe in 1981. This must have been faulty recollection, since McAuliffe's broadcasts about them were in July, 1984, and my impression of McAuliffe was that he would be unlikely to sit on such a story for three years.

By the time D.B. approached the Commission investigators in April 1989, the Inquiry had already heard by way of direct evidence how Gayder came into possession of many Force guns. Gayder himself had admitted in testimony that a good portion of his collection, possibly as many as 49 guns, might have come into the possession of various Force personnel as seized weapons and then later been given to him. D.B.'s allegations that Gayder had registered in his name guns that had been seized by the police had already been a matter of record since early in the hearings. The issue was not whether this had happened, but rather the propriety of Gayder's accepting guns which he knew had been so obtained. The identity of McAuliffe's informant was no longer relevant; by agreement between McAuliffe's counsel and Commission counsel, McAuliffe had returned to the Inquiry and testified for three days about his knowledge of Gayder and his collection of guns, and swore that he had revealed all the information he had received from his unidentified sources.

Nor was D.B.'s suspicion about alleged preferential treatment for Lake news to the Inquiry; Constable Onich had already testified about this in April 1989, and the matter had been fully canvassed.

D.B. agreed that he was not aware at the time he gave his will-say, nor had he been told, that Ciszek had testified that there had been absolutely no attempt to influence his investigation of Lake; that the matter had been discussed with the senior Crown Attorney, who advised that there were no grounds for a criminal charge, and suggested *Police Act* charges instead; that *Police Act* charges were then laid, and were prosecuted by a part-time Crown Attorney who was later appointed a judge (rather than by a senior police officer as is more usual), that Lake's own counsel was a highly respected lawyer who was later appointed a judge, and that the case was tried and sentence imposed by a judge (rather than by a senior police officer as is normally the case). Had senior officers wished to ensure that Lake was given special consideration, they could have assigned the duties of prosecuting and presiding over the trial to sympathetic members of the Force itself.

Apart from many contradictions in his testimony that could have been due to faulty memory of events occurring some 14 years previously, there were other very serious problems in respect to D.B.'s reliability. Referring to VanderMeer, he insisted under stringent cross-examination by Ryan's counsel in November, 1990, that he had had "many conversations with him over the past summer."[8] VanderMeer swore that he spoke to D.B. only twice, once in August and once in September. On it being suggested to D.B. by Board counsel that a Sanyo radio and cassette player contained on a list of items seized from the Lake residence had been found in Lake's bedroom and might have given him concern because Lake was using it personally, he agreed and added that he had a recollection of that. On cross-examination, it was pointed out to him that the evidence was that the Sanyo radio-cassette was not in Lake's bedroom, but had been found in Lake's basement with other exhibits, and that it bore a police tag and was badly damaged. When it was put to him that his previous evidence had been "a total fabrication," he agreed. Similarly, he testified that a television set found in the basement was plugged in and appeared to be in use. On cross-examination, he was confronted with Ciszek's notes and testimony that the television set was new, had a plastic bag around it, and the cord was wrapped in such a way that Ciszek concluded that it had never been used, and he admitted that his previous sworn evidence had been "mistaken." He testified that he believed Ryan had no paid sub-informer, and instead kept for himself the informant funds he received from the RCMP. Subsequently, he changed his evidence several times on that subject. Finally, on cross-examination, he was shown his application to the RCMP to have Ryan appointed as an informant. The application was signed by him, and certified that Ryan had a subsource and that "This office is satisfied that any awards would be paid to the informant's subsource." It was put to him that "you knew that you were probably lying in an official RCMP application that you put forward to your superiors, is that correct?," and he answered: "That's correct."[9]

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[8] Inquiry transcript, vol. 222 (Nov. 6, 1990): 23.

In his will-say prepared by Sergeant VanderMeer, D.B. stated that since his original April, 1989, interview by Commission investigators: "no-one has come to see me for information. Nor was I ever pushed for the reports ... No-one from the Colter Inquiry has questioned me since that time."[10] On cross-examination, he admitted that he had been contacted repeatedly by the Commission investigators during the eight months following his first interview, including several phone calls, eight separate requests for the GORs in question, and four meetings involving three recorded interviews the last of which was on December 6, 1989, more than seven months after the first interview.

In his will-say he stated that Lake had liquor bottles in a cabinet with markings indicating that they had been seized by the police, and that the liquor level was below a mark drawn on them to indicate the level of liquor in them at the time of seizure. In evidence he estimated the number of such bottles at seven to 10. The intimation was that Lake consumed some of the seized liquor.

D.B.'s own RCMP list made at the time of the seizure was filed as an exhibit, and showed 29 smuggled bottles of liquor seized from the cabinet, none of which had police markings. Only one bottle had police markings, and this was found on the basement floor. It had a police tag, and had finger print powder on it, consistent with it being an exhibit. D.B had given a statement to Ciszek for use in the *Police Act* prosecution that this bottle was not a smuggled item, and no mention was made of any level markings on the bottle or suspicion that any of the contents had been consumed, a fact that would have been very relevant in a *Police Act* prosecution.

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[9] Inquiry transcript, vol. 221 (Nov. 5, 1990): 100.

[10] Will-say Statement (90-09-03): 15.

D.B. was questioned about his resignation from the RCMP. At first he stated that he left for personal reasons; he later indicated he left under something of a cloud. Many of his statements involving others were denied by them under oath. In his will-say he stated that "Sergeant Ryan received substantial amounts of money ..."[11] as an RCMP informant, and in evidence placed the amount at at least $2,000 to $3,000. Under RCMP procedures, requisitions must be filed for such payments, receipts signed, and payments recorded in the informant's file. RCMP personnel responsible for such payments were interviewed and were emphatic that this procedure was rigidly followed. Ryan strongly denied that he had kept informer money for himself, and his RCMP file showed that he had received a total of $185.

D.B.'s evidence about Ryan having credited Lake's allegedly light sentence to his influence over Gayder was positively denied by Ryan, who stated he had never said any such thing to him, had no such information and had never heard the allegation until he heard D.B's evidence. D.B. testified that when Ryan and Davidson gave him Gayder's gun registrations, they had concluded that Gayder was a thief. Both Ryan and Davidson vehemently denied that any such conversation ever took place. D.B. testified that Ryan in Davidson's presence gave him the gun documents in a brown envelope. Both Ryan and Davidson swore that it was the reverse, that D.B. gave the gun registrations to Ryan to check them out against NRPF GORs, and Ryan testified that he found no matches between GORs and Gayder's registrations. As already noted, D.B. stated he had found 17 matches. There were a number of other similar inconsistencies and contradictions in D.B.'s evidence. His detachment commander stated, after contradicting a statement made by D.B.: "The only difficulty I had with him was when he lied, and I had a lot of that."[12]

D.B. referred to Alan Berry as a source of his information about Lake. Berry was called as a witness and stated he had worked with Lake in the early 1970s and left the Force in 1977. He had heard rumours of Lake's smuggling activities, as well as other "scuttlebutt" about property and guns going astray. I am satisfied that he had no personal knowledge about these rumours. Mr. Berry's evidence did nothing to factually support D.B.'s allegations.

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[11] Ibid.:2.

[12] Inquiry transcript, vol. 225 (Nov. 13, 1990): 222.

I have gone into mind-numbing detail about the D.B episode because of the manner in which it was introduced, the accompanying accusations aimed at Commission counsel, and the extremely serious allegations of corruption on the part of members of the NRPF. I shall be referring to the motivation behind it all in other parts of my report.[13] So far as the evidence of D.B. is concerned, I find it to be completely unreliable. I have no faith in his credibility, and consider that the several weeks devoted to investigating and assessing his allegations was a complete waste of the Commission's time and the public's money. Nothing was learned about Gayder's guns that we did not know before. Lake's smuggling operations were probably outside the Commission's terms of reference, and Lake is long since retired from the Force. As I pointed out at the time, if the Lake smuggling matters were introduced simply in order to obtain my comments on the propriety of a police officer smuggling goods into Canada, much time could have been saved by a simple submission to that effect. I am aware that civilian smuggling for one's own use may be viewed less seriously by the public in a border area than elsewhere, but that does not apply to those who are sworn to uphold the law. Lake broke the law, and as a police officer he dishonoured his profession, and contributed to a loss of public confidence in the Force. He deserved to be charged under the *Police Act*, and I find that his offence was properly prosecuted and no improper influence was exerted at any stage of the proceedings. However, there is no evidence that he stole Force property.

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[13] See p. 346.

(C) HISTORY OF OTHER GUNS IN CLOSET 374

(1) Firearm storage facilities in the 1960s and 1970s and closet 374

In St. Catharines in the 1960s, before regionalization, Force firearms, seized and found firearms, and firearms privately owned by the members of the Force's revolver club were stored in a closet, designated as the Force arsenal located on the first floor of Force Headquarters at 68 Church Street. The desk sergeant had the key to the closet, and in the casual atmosphere of the time, almost anyone could get the key by asking for it. Firearms being held as court exhibits and weapons used for training and display purposes were stored in another room nearby.

In April 1971, following regionalization, a Force firearms officer was appointed, and he visited all the divisions and detachments to collect spare Force guns and seized and found firearms. He collected about 10 spare Force handguns and 10 to 15 seized or found firearms and put them in the arsenal closet, along with three or four training guns and about seven revolver club guns.

In 1971 or early 1972 the spare Force guns were moved from the arsenal to closet F-13 across the hall from the office of Inspector Bevan, the officer in charge of Quartermasters Stores. New Force weapons were stored in a closet in Bevan's office. Seized and found handguns remained in the arsenal closet pending trades.

In 1973, Deputy Chief Gayder obtained permission to store books and records from his office in the arsenal closet, along with the seized and found handguns, training guns and museum weapons. In 1975 a fire in the cell block necessitated the temporary removal of the items stored in the arsenal while renovations were completed.

In 1978 an amnesty was declared, allowing citizens possessing unregistered guns to turn them in for registration or disposal without penalty. Many handguns were turned in and Sergeant James Johnson, the officer responsible for their safekeeping, obtained from Deputy Chief Gayder permission to store them in the arsenal closet. Johnson testified that the closet contained documents, books, and three or four boxes of guns that Gayder said were being held for a future museum. There might have been knives mixed in with the guns, and he believes there was a morningstar (a martial arts weapon). The boxes were open and the contents could be seen by anyone looking into the closet.

Clayton Marriott, then the training sergeant, testified that around 1978, at Gayder's request, he moved one or two boxes of handguns from Gayder's office to the arsenal closet. In 1980 or 1981, Gayder brought some 26 to 30 of his own handguns and a flare pistol from his home in a brown satchel and stored them in the arsenal closet. (What is believed to be the same bag was later found amongst the other items in closet 374).

Thus, from 1980 to 1984 the arsenal closet contained training guns, museum guns and other items, 26 to 30 of Gayder's personal guns, some books and records, possibly some revolver club guns, and other miscellaneous items. Guns were added from time to time, and guns were removed for trade purposes. Throughout this period, handguns required as court exhibits were kept separate from the other guns until they were no longer needed, and then were sent to the arsenal closet for future disposal.

In 1984, in anticipation of renovations to the whole main area, including the arsenal, 30 to 40 boxes containing weapons and many other items were moved temporarily into a vault on the top floor of the building. When the renovations were completed, these items were moved to various locations, including the Force library. As a result of the alterations, the office of Chief Gayder's secretary contained a large inner "closet" with metal shelving and a kitchenette counter with appliances. Due to lack of other storage space, some 10 or 15 boxes of files, binders, and items such as handguns, knives, brass knuckles etc., said to be set aside for a future museum, were moved from the vault into this closet.

In the spring of 1986, everything was moved out to allow the installation of new lockable cupboards. The "museum" items, chronological and criminal intelligence files and other items were moved into a nearby empty closet, known as closet 374, and a lock was installed. What wouldn't fit into the closet was put in the Chief's and secretary's offices or the boardroom. A civilian employee, John Rhodes, testified that he moved into the closet four or five open boxes of handguns and knives, including items such as a ball and chain, spiked wristbands etc., a canvas bag of handguns and approximately five rifles. As he was picking up the rifles, Gayder said, "I keep them here because my wife doesn't like them around the house." Rhodes thought he was referring to the rifles because he knew Gayder was a hunter and assumed that the rifles belonged to him. Several other civilian employees, including Ms Billie Hockey (later a member of the IIT), observed the move, which was done openly.

The presence of weapons in the closet was common knowledge. Undoubtedly, much of the trouble that resulted from the suspicions and publicity following the opening of closet 374 would have been avoided had there been in place proper controls and records of all weapons coming into the police premises. However, the question is whether the circumstances warranted the IIT's conclusion that they amounted to cogent evidence of theft by Gayder, rather than simply being evidence of poor management practices, and of a lack of appreciation of the fact that in recent years the old casual attitude toward the disposal of weapons had dramatically changed.

William Wolski, a member of the Attorney General's Ministry, prepared a memorandum replying to the questions raised in the six-volume brief the IIT had delivered to the Ministry in June. On October 15, 1987, Douglas Hunt, Assistant Deputy Attorney General, after consultation with other senior members of the Ministry, delivered the memorandum to Chief Shoveller and members of the IIT. In relation to the weapons found in closet 374 and "all related circumstances," the IIT brief had asked, "Did James Arthur Gayder violate provisions of the *Criminal Code* relating to weapons, theft and breach of trust offenses?" After reviewing the facts as set out in the IIT briefs, Wolski concluded that no honest belief could exist, based on reasonable and probable grounds, that an offence of theft or an offence under sections 88 or 89 of the *Criminal Code* relating to the possession of weapons had been committed. In its report to the Board, the IIT suggested that Wolski misapprehended the evidence as to departmental regulations governing the handling of seized and found weapons and the relevant sections of the *Criminal Code*, and applied a higher burden of proof than was necessary for the laying of a charge, and instead was requiring proof beyond a reasonable doubt.

It is not within my mandate to comment on the opposing opinions of Mr. Wolski and the IIT as to *Criminal Code* offences in relation to the contents of closet 374, but I have elsewhere set out the circumstances and my conclusions regarding the various individual weapons found in the closet.

The evidence is (1) that Gayder made no attempt to hide the fact that there were guns stored in closet 374; (2) that there was a real intention to set up a museum for which the closet contents, properly sorted and classified, could have been used; (3) that, since 1974, Gayder had made no attempt to register any handgun in his own name; and (4) that a large proportion of the weapons in the closet were virtually valueless and of no interest to a knowledgeable collector such as Gayder, and would have been sorted long ago if Gayder intended to keep the best items for himself. The state of the unsorted conglomeration of articles present was more consistent with Gayder's and Pay's evidence that they had simply not got around to sorting and classifying it for museum purposes.

I conclude that the evidence does not support the allegations that Gayder had appropriated for his own use the contents of the closet.

There is, however, the question of judgement that should be expected of a Chief of Police. While there were apparently no regulations on the matter, it should have been obvious that it was improper to store personal firearms in police headquarters, at least other than in the Force arsenal and with proper documentation. Gayder, as the head of the Force, showed very poor judgement in doing so. As well, by using the same closet as that in which he had placed Force weapons, he provided a basis for the rumours that he had converted Force weapons to his own use. He also left himself open to the suggestion, made during the course of the Inquiry, that he was breaking the gun registration laws by keeping handguns at an address other than that of his residence as shown on his registration certificates.

Further, having been questioned by the OPC about his gun collection, and presumably being aware of the rumours and McAuliffe's broadcasts of impropriety in that regard, common sense should have dictated to Gayder the necessity of creating secure storage for weapons intended for the museum, in an area accessible to Sergeant Pay, the curator, and well removed from the Chief's office area.

The evidence also points up a problem about the keeping of civilians' guns in storage for safekeeping,[14] and some policy should be formulated in this regard.

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[14] See The Chiavarini guns, p. 62.

(2) The Caine gun

In June, 1970, one Caine, a citizen of the USA, was charged and convicted of impaired driving. A handgun, registered to him in the USA, was found in his possession and was seized. A charge of unlawful possession of the gun was withdrawn. The gun, together with its holster and police property tag, was found in a locked cupboard in Gayder's outer office at the same time that the IIT carried out the search of closet 374 nearby. It was from this cupboard that John Rhodes had moved weapons and other items in boxes to closet 374. Gayder does not recall ever seeing this gun, and suggests that it was in the police arsenal prior to regionalization, and may have been put in the boxes of materials intended to be used for display. Neither the St. Catharines Police Department nor the NRPF ever got around to returning the gun to Caine, perhaps because of the difficulty of doing so legally since, at the time, Caine presumably had no carrying or other permit valid in Canada.

The IIT posed the question, "Did Gayder's possession of the Caine weapon constitute Theft and Possession of an unregistered, restricted weapon as defined in the *Criminal Code of Canada*?" Wolski reported in the negative on the ground that Gayder could not reasonably be held to be in possession of all the weapons in both of the closets in question. The IIT reported to the Board that Wolski had missed the "seminal issue" of whether the gun should have been returned to Caine, and had again applied too high a standard of proof for laying a criminal charge, as opposed to proof at trial.

There is no doubt that all of the officers involved (probably including Gayder as the officer ultimately responsible) must be faulted for failing to follow up on the matter of what should be done with the gun. At the very least, this illustrates the need, as already noted, for drastic improvement in the Force property record system. As to the question of possession, I agree with Wolski.

(3) The Chiavarini guns

Ralph Chiavarini, the registered owner of two handguns, died in March 1979. In January or February, 1980, his widow decided to take a vacation in Florida, and fearing the guns might be stolen in her absence, she telephoned then-Deputy Chief Gayder, whom she knew as a customer of her restaurant, asking whether they could be kept at the Police Station. Gayder sent Sergeant Allan Marvin and Constable Kenneth Mitchell to pick them up, and they were turned over to Gayder and stored in the Force arsenal. No documentation was prepared. Gayder told the Inquiry that he did not cause an occurrence report to be filed because he considered he was simply doing a favour for a friend. The guns were found by the IIT during their search of closet 374. A more detailed account of the circumstances surrounding the IIT report on these guns will be found at page 229.

As has already been illustrated, the property system, particularly in relation to non-Force guns, was administered in a most casual manner during the 1970s. Gayder, as Deputy Chief (Administration), was responsible for the enforcement of the regulations about recording the receipt of firearms, and although the regulations referred to "found and seized property" and not property held for safekeeping (as Gayder states was his understanding of the status of the Chiavarini guns), proper administration would require that a record should be prepared for any guns coming into the custody of the Force. Had this been done, the Chiavarini guns would not have been lost track of, and the allegations of misconduct in relation to them would never have been made.

I shall be recommending that, if private property is to be accepted for safekeeping under special circumstances, a proper policy be developed and appropriate regulations be passed requiring proper controls and records.

(4) Untraceable guns

The history of a large number of the guns in closet 374 remains unknown. Between 70 and 75 handguns fall into this category. Gayder testified that he was "very much surprised" at the number of guns found in the closet. The guns he brought from home had been stored in the arsenal closet, along with training guns, museum guns and probably amnesty guns and others, such as three boltless rifles used for loans to theatre groups and the Chiavarini guns held in safekeeping. He surmised that, in the various moves of weapons from the arsenal closet to other locations, someone, for ease of carriage, may have added guns to the boxes Rhodes handled, or to the brown satchel of guns he had brought from home. Extensive research of Force and RCMP records by the Commission investigators failed to reveal the source of many of these guns, and their route to the closet 374 will presumably remain a mystery. With new storage practices that have been introduced, the problem should never be allowed to arise again.

(5) The museum

Prior to regionalization, some handguns, sawed-off shotguns and rifles, knives, bayonets, martial arts weapons etc. were kept for training or display purposes. At least as early as 1942 the Niagara Falls Police Department displayed on a wall near the public entrance to its headquarters seized and found prohibited weapons. Around 1973 or 1974, when a new headquarters was being considered, Chief Shennan and Deputy Chief Gayder discussed the inclusion of a museum and library. On a visit by Gayder to the Metropolitan Toronto Police Museum, the curator donated some articles to him for museum purposes, and thereafter Gayder states he set aside special items for a future museum, storing them with arsenal articles.

When plans for a new extension to headquarters were discussed with the Board in 1979-80, space was allocated to a museum, and Sergeant Douglas Pay was designated as curator. In 1985, Gayder, as Deputy Chief, wrote to the Solicitor General requesting permission for a museum, and visited other forces' museums for ideas. Also in 1985 a bulletin was posted advising that a museum was being set up and soliciting memorabilia as exhibits.

There can be no doubt that it was common knowledge that a museum was being planned, space had been allocated, and Sergeant Pay had set up display cases and was assembling display items with the approval of the Board. Gayder's claim that he was collecting items, including handguns, for this project was the foundation of what was later characterized by Board counsel as his "museum defence."

On February 24, 1987, Acting Deputy Chief Moody had Sergeant Pay catalogue the contents of closet 374, and Moody testified that Pay told him that he was aware of the closet's contents and that the guns were for the museum, that Gayder had been too busy to put them with the museum items in Pay's custody downstairs, and that Pay had taken him (Moody) downstairs to view the museum collection there, including two handguns and some airguns. The IIT was thus aware that some or all of the weapons in closet 374 may have been set aside to be sorted for museum purposes.

In their confidential report to the Board, the IIT rejected any suggestion that the weapons in closet 374 were being held for museum purposes, relying on the fact that Sergeant Pay "... said that the weapons, for the most part, could not have been used for a police museum, as many were duplicates and had no significant historical value." In his testimony, Pay could not recall saying this, and stated, "I would have taken all the guns for the museum .... And then pick and choose what I could for different displays."[15] From his evidence I conclude that he probably did, when asked by the IIT whether he could use all the guns, say he could not use them all, but apparently he was given no opportunity to explain, as he did in his Inquiry evidence, that they would first be sorted, and that while he could only display a few at one time, he would want to have a large number in reserve so that he could change the displays frequently.

The other reason given by the IIT for giving short shrift to the museum explanation was that, although Gayder had written the Solicitor General on June 26, 1985, requesting that "our museum be designated as an Approved Museum for the purposes of Part 11.1 of the Criminal Code," nevertheless, since only "memorabilia" were mentioned as its proposed contents, and the letter did not mention weapons, and was addressed to the "wrong ministry," therefore "... Gayder had never applied for permission to exhibit restricted weapons in a museum." This was a complete misconception of the applicable law.

In 1985, sections 88 and 89 (now 90 and 91) of the *Criminal Code* made it an offence for anyone to be in possession of a prohibited weapon, or of a restricted weapon without a permit. Section 90(1)(b) (now section 92) exempted police officers from those sections for such possession in the course of their duties. In 1985, section 90(2) of Part 11.1 [(now section 92(2) of Part 111)] of the *Code* provided that "no operator of or person employed in a museum approved for the purposes of this Part by the Commissioner or the Attorney General of the province in which it is situated is guilty of an offence under this *Act* by reason only that he has in his possession a restricted or prohibited weapon for the purpose of exhibiting the weapon or storing, repairing, restoring, maintaining or transporting that weapon for the purpose of exhibiting it." Section 2 of the *Code* defines Attorney General as meaning "the Attorney General or Solicitor General" of a province, and in Ontario applications for museum permits are made to the Solicitor General.

Gayder's intention to establish a museum containing weapons was one of the reasons the Attorney General's Ministry gave for rejecting weapons charges against Gayder involving the weapons stored in closet 374. There was ample evidence available to the IIT that plans had been made for such a museum and that Gayder had expressed his intention of providing weapon exhibits from the weapons stored in closet 374. Very little research would have revealed that Gayder's application had been made to the proper authority, and that approval for a museum under Part 11.1 of the *Code* would carry with it the right to display prohibited and restricted weapons. In any event Earl Soley, the Firearms Examination Officer of the Chief Provincial Firearms Office, to which office the issuing of museum approvals is delegated, was of the opinion that no approval for a weapons exhibit was necessary since the relevant sections of the *Criminal Code* exempt police officers in the execution of their duties. I accept Soley's opinion that no approval was required, but even if he is not correct, Gayder did indicate his intention by applying.

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[15] Inquiry transcript, vol. 25 (Jan. 18, 1989): 142.

No approval for a museum had actually been granted, since the application had somehow gone astray before reaching the Chief Provincial Firearms Office. A copy of the letter, taken from NRPF files, is an exhibit.[16] Pay swears he prepared it and had it signed by Chief Gayder, and the intention expressed by it is one of the factors upon which the Attorney General's staff relied in concluding that, "... in these circumstances no honest belief could exist based on reasonable and probable grounds that an offence has been committed under either Sections 88 or 89 of the *Criminal Code*."[17]

It accordingly is clear that soon after regionalization the concept of a museum was included in plans for a new headquarters, and that space was allotted and approved by the Board and a curator appointed in 1979-80. It is only when it is intended to exhibit restricted or prohibited weapons that governmental approval is required, and that intention was presumably the reason for Gayder's application. In Ontario the application is to the Solicitor General, and the IIT's conclusions to the contrary and their doubts about Gayder's intention to exhibit restricted weapons were apparently wrong.

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[16] Exhibit #45.

[17] Wolski Report (Oct. 17, 1987): 4.

(D) OTHER GUN ALLEGATIONS

(1) The Remington Woodmaster rifle

This .308 calibre rifle was on the 1977 list of "Firearms for Disposal." Former Deputy Chief Martin Walsh testified that in November of 1977 he went to the sub-basement room in police headquarters, used at that time as an armoury, where a number of handguns and "long guns" were being prepared for a trade. He commented to Gayder that he liked a 30-30 Winchester rifle amongst the long guns and Gayder told him to sign it out.

Gayder testified that he had a conversation with Walsh at that time about "shoot-outs" with criminals and the fact that there were no weapons in their vehicles to protect against such violence, and that, as a result, he gave the Winchester to Walsh to carry in his police vehicle, and put a .308 Remington rifle from Supply in the trunk of his own police car. In February, 1987, after being suspended, he telephoned Deputy Chief Parkhouse, told him that he had signed out a rifle to carry in his car, and asked Parkhouse to return it to the arsenal, which Parkhouse did. The IIT learned of this, and in its brief asked the Attorney General whether a charge of theft should be laid against Gayder. Wolski reported that there were no reasonable grounds, and the IIT concurred. I also agree.

(2) Guns with obliterated serial numbers

Edward Lake joined the St. Catharines Police Force on May 11, 1949. Shortly after the 1971 regionalization of the Niagara area forces, he was appointed Identification Officer for the NRPF. The main duty of the identification officer is to gather evidence of a physical nature in connection with a suspected illegal act, test the item if necessary, and hold it for use as a court exhibit. When it has served its purpose, it is to be turned over to the property department for appropriate disposal, that is, to be returned to the owner, destroyed, sold at auction or traded.

At the time Lake took over, property coming into the Identification Office was stored in the firing range in the sub-basement of the old police building, some in lockers, but large amounts were in piles on either side of a pathway cleared for passage of officers using the range. One witness described it as "a junkyard." Many items were taken by Lake to the basement of his home to be tested on his own time.

On January 1, 1983, Lake suffered a heart attack; was hospitalized for a time; and was off duty on sick leave until his retirement on June 1, 1984. Around the end of January, 1984, he received word that the Fire Department had ordered the removal of certain of his storage lockers in a passageway in the sub-basement. In the late evening of March 1, 1984, he went to the police station to complete the removal of the contents of those lockers to other lockers under his control in another area. As he was carrying a box of guns to a secure locker, locker N°. 9, he realized that the keys to that locker were in a locked desk drawer, and that he had left the key to the drawer at his home.

Lake testified that at 1:30 on the morning of March 2, he asked Constable Gerald Melinko, one of the identification office staff, to allow him to place the box in Melinko's locker until he could return the next evening and remove it to locker N°. 9. This was agreed to, and Lake testified that he did return on the evening of March 2, and removed the box to locker N°. 9 Lake stated that the box contained guns given to him by Inspector Gittings in September 1982, for disposal and that before he could turn them over to property for disposal, it was his duty to "check them out." He had "not gotten around to this" before his heart attack.

Melinko testified that he believed that Lake had brought the box into the station from his home, and being aware of Lake's previous difficulties about articles kept in his home,[18] he opened the box in the presence of Constable George Onich, another member of the identification squad, and found that it contained a .38 Colt, a .44 Ruger, a .41 Smith & Wesson and a .32 Iver Johnson. Melinko and Onich wrote the number "11906" (a combination of their badge numbers) under the grips of each gun, in invisible ink so that it could not be easily seen, for identification purposes. They were "concerned about what was going to happen to them," since the Iver Johnson was a gun Melinko had seized in 1981 and had turned over to Lake for identification and disposal.

Melinko states that he told Staff Sergeant (now Deputy Chief) Kelly about the incident on March 5. Kelly testified that he told Melinko to put the guns in Property. Prior to testifying before the Inquiry, Melinko checked the Property records, and found the guns had not been entered. Accordingly, he told the Inquiry that he believed he must have turned the guns over to Kelly, but in view of Kelly's statement, he is apparently not sure what was done with them at that time.

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[18] See p. 51.

In any event, in June 1987, in the course of the IIT investigation, Melinko found the Colt, the Smith & Wesson and the Ruger in a drawer at the Property offices at 11 Neilson Street. He was concerned that they had not been destroyed since two of them had had the serial numbers obliterated, and the other had never had a serial number.

Gittings' evidence is that over the years a number of seized and found weapons had accumulated in detectives' lockers, and that he turned over a box containing 10 or 12 of them to Lake in September 1982, with instructions to trace them and then dispose of them through Property. In April, 1984, he learned that they had been found in locker Nº. 9, and received instructions from Deputy Chief Walsh to have Sergeant Pidduck dispose of them. Pidduck advised Gittings that the instructions had been carried out, and Gittings so advised Walsh.

The staff sergeant in charge of Quartermasters Stores at the time stated that when he left Stores in 1985 there remained in the gun storage cabinet between 18 and 24 large calibre handguns, which had been set aside by Gayder, who had said that these were valuable guns and he hoped the legislation would be changed to allow them to be sold. Gayder was at the time a member of a committee set up by the Solicitor General to recommend amendments to the *Police Act*. Evidence was given that new serial numbers could be obtained for handguns which would be re-stamped and re-registered. The NRPF firearms officer was aware of this procedure.

The IIT posed the following question: "Considering the circumstances in this matter, did James Arthur Gayder commit an offence by possessing restricted firearms whose serial numbers had been altered, defaced or removed?" Wolski reported that "Section 90 of the *Criminal Code* provides a blanket protection for a peace officer who has in his possession a restricted weapon for the purpose of his duties or employment. There is a total absence of evidence to indicate that these weapons were ever used or controlled by Gayder during the time that they were stored in the facility with the Force. In these circumstances an honest belief based on reasonable and probable grounds does not exist that Gayder had possession of these weapons outside the scope of his duties or employment."[19] The IIT disagreed, reporting to the Board that Wolski had placed too much weight on Section 90, and that the "blanket protection" is subject to "an accused person first proving on the balance of probabilities that, given his circumscribed duties as a police officer, he was properly discharging those duties."

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[19] Wolski Report (Oct. 12, 1987): 18.

Lake's practice of taking exhibits to his home for identification or testing purposes may be understandable in the face of the lamentable space limitations with which he was faced at headquarters, but the practice has been stopped, and must never be allowed to recur. If this Inquiry's recommendations concerning proper Quartermasters Stores facilities are implemented, the space problem should be solved.

It is apparent that Lake paid little or no attention to administration or record-keeping, that his method of storing exhibits was chaotic, and that there was a complete breakdown of the property system in the identification office area, but I conclude that, apart from his smuggling activities, the circumstances do not amount to misconduct on his part in the moral sense. So far as Gayder was concerned, the evidence does not establish possession of the guns or misconduct on his part in relation to them.

(3) The DeMarco gun

In 1981, Mark DeMarco, the proprietor of a jewellery, coin and second-hand goods shop in St. Catharines, purchased a .25 calibre handgun from the grandson of the owner. Sometime thereafter, when Gayder, then Deputy Chief, was in the store to make a purchase, DeMarco asked him to check on whether the gun had been stolen, and Gayder took it to Police Headquarters to check out its ownership. A Canadian Police Information Centre (CPIC) search having indicated that there was no record that it had been stolen, and that it was still registered to the vendor's grandfather, Gayder returned the gun to DeMarco. From his conversation with DeMarco, Gayder states he assumed that DeMarco dealt in guns as well as other goods, and that a document he pointed to on the wall was a licence to that effect. He states that he assumed, incorrectly, that DeMarco would register the gun himself. Subsequent investigation revealed that the grandson had taken the gun without the consent of the grandfather. The circumstances led to an internal investigation of Gayder's involvement ordered by Chief Harris in 1983, and by the OPC in 1984. No charges were laid, and although the OPC found that Gayder exhibited questionable behaviour in failing to inquire properly into the background of the gun, they did not imply any improper motive or wilful disregard of duty.

The IIT posed the following question: "... considering that Gayder failed to ascertain if DeMarco could legally receive the weapon: did he violate section 94(1) of the *Criminal Code of Canada*?" Section 94(1) made it an offence to deliver a restricted weapon to a person who is not the holder of a permit to possess the weapon. Wolski replied that, due to the death of the grandfather, the non-co-operation of the grandson, and the lack of charges in the two prior investigations, there was insufficient evidence to satisfy the burden of proof, and the probability was that, due to the passage of time, the court would stay the charge and he accordingly would not recommend instituting proceedings. The IIT reported to the Board that it agreed.

However, I conclude that Gayder, perhaps because of his casual attitude in relation to guns, was extremely careless in failing to check with the registered owner of the gun whether he had consented to its sale, and also in failing to assure himself, before returning the gun to DeMarco, that he was a qualified gun dealer, and, if he was not, to ensure that the transfer of the gun was properly registered.

(4) The Onich allegations

Constable George Onich, a member of the IIT, created considerable sensation in the media when he volunteered to the Inquiry, in the course of his testimony on another matter, that he had knowledge of three incidents involving guns that, in his view, amounted to criminal misconduct on the part of members of the Force, but had not reported them to a senior officer because he "did not know who he could trust." The Commission investigators were then dispatched to carry out a lengthy investigation of the alleged incidents.

(a) The suicide gun

The first incident involved a retired Force member, Norman Fach, former Chief of the Grantham Township Police Force (which became part of the NRPF on amalgamation in January, 1971). In February 1978, Constable Onich was the identification officer in a gunshot suicide investigation. A Marlin .22 rifle, a Stevens shotgun and a .38 Smith & Wesson (the gun used in the suicide) were turned over to him. Onich found that the handgun was not registered, and he testified that M., the husband of the deceased, told him that he had obtained the handgun from Fach in the mid-sixties and that Fach told him "that the registration would be handled by the Police Department." Onich considered that Fach was at fault for giving an unregistered gun to M. He did not report the matter to his superiors, Sergeant Lake or Inspector Murdoch, not being sure he could trust them, nor did he make any notes.

M. testified that he purchased the gun from an acquaintance in 1954 and that he and the vendor attended on Chief Fach to have him "check" the gun. A few days later he picked up the gun from Fach and received a paper that he assumed consisted of a gun permit. He stated that following the conclusion of the suicide investigation, he retrieved the shotgun and some other seized items but sold the rifle to a police officer for $35-40. M. identified, as his, a signature on the police supplementary report form covering this incident acknowledging receipt of all three weapons. The date beside his signature is June 13, 1978. However, he states that he believes he left the handgun at the police station for destruction and that it was not sold with the rifle.

Application to register the gun in the name of Constable Kenneth Mitchell was made during the week of August 30, 1978. Constable Mitchell testified that he purchased the handgun and the rifle from M. in August 1978 for $200. Constable Mitchell's evidence was completely credible, and I conclude that M.'s recollection of the events that occurred at a very stressful time 12 years earlier was faulty in this respect. Although the practice of police officers purchasing seized firearms from even the owner should be severely discouraged in the present climate of concern about firearms, there was nothing illegal about the transaction; there was no published Force policy prohibiting such purchases, and it was not an uncommon practice at that time. I find no misconduct on the part of Constable Mitchell in this regard, and there is insufficient evidence at this late date, 35 years after M.'s acquisition of the gun, to conclude that there was any misconduct on the part of Fach.

(b) The smuggled gun

Constable Onich testified that in January, 1983 he had a conversation with Constable Al Feor, who was unhappy with Sergeant Edward Lake because a promotion Feor had expected had gone to another officer. Sergeant Lake was Feor's superior officer, and Feor assumed that Lake had not supported him for the promotion. Onich stated that Feor told him that when Lake was in trouble in 1976 about smuggling goods from the USA, Feor had "smuggled a gun back into the station for him." Onich felt this could involve the offences of theft, possession, conspiracy or obstruction of justice. He did not report the incident, because, since he did not trust his superiors, "there was no one to go to" who could do anything about it.

Lake swears he at no time asked Feor to take a firearm into the station for him, and Feor denied that Lake ever asked him to do so. Feor does recall Lake coming to the station when he was under suspension and asking Feor to move a gun from a cabinet in the laboratory to Lake's secure locker in the sub-basement. He does not recall telling Onich about this, and Lake cannot recall the incident, but says it is possible.

There is simply no evidence to support Onich's suspicions. I can only conclude that Onich misinterpreted his conversation with Feor.

(c) The museum gun

On September 27, 1984, a citizen brought into the station a handgun he had made 30 years previously and offered to donate it to the proposed Force museum. A note to this effect was entered in the Property Report for that day by Constable Feor, of the Identification Branch. Feor showed the gun to Deputy Chief Gayder, who he believes told him to "put it into Property." It was not entered into Property records until October 9, 1984, perhaps because Feor was off duty between September 28 and October 10, and the entry system got behind. In a casual conversation in November 1984, Feor mentioned the incident to Onich. Onich states that Feor told him that he left the gun either with Gayder or with Gayder's secretary. Because of rumours Onich had heard about seized guns going to Gayder, Onich made notes of this conversation, although he did not report it to anyone. He then searched the Property records to see whether the gun had been entered, and found no record anytime in the previous year. He insists his search was thorough, and his only explanation is that somehow he missed the October 9 entry, or someone added it afterward.

The record of the entry shows no sign of it having been entered later in time (entries are all chronological), and I conclude that there is no evidence of any impropriety in relation to this weapon.

(5) The Lorenzen allegations

Dr. David Lorenzen of St. Catharines, while serving as a senior coroner, became concerned about rumours of NRPF officers approaching the families of gunshot suicide victims regarding purchase of the suicide gun. Accordingly, he adopted the practice of making an order, under the *Coroner's Act*, requiring the suicide weapon to be held for one year. In June, 1986, during a public inquiry under the *Coroner's Act*, he mentioned this practice and the rumours that prompted it.

Perhaps because of the earlier CBC broadcasts and other publicity about rumours of impropriety in the NRPF, Dr. Lorenzen's remarks resulted in sensational news quotes to the effect that he had accused the Force of "routinely selling prohibited weapons" and there was reference to "a black market" in weapons. In his evidence at the present Inquiry, Dr. Lorenzen denied making any such statements, and testified that he was "absolutely not" making any allegations that the Force was "engaged in a black market and sale of guns."[20] The only person he mentioned as having bought a gun from relatives of a suicide victim was Kenneth Mitchell (whose purchase has been examined above), although he had been told of a similar case involving a sergeant who was now retired.

He testified that on another occasion he was advised that a .357 Magnum, a suicide weapon, was available, that the coroner in charge was interested in buying it, but that if he (Lorenzen) was interested, he could probably have it. He stated that, although he was interested because he had some guns himself and did target shooting, the price was too high. The intimation was that, had the price been right, he would have seen nothing wrong with acquiring the weapon for himself. These were the only three instances of which he had personal knowledge.

I conclude that, while the practice should be discouraged, none of the circumstances recited by Dr. Lorenzen disclosed any misconduct, and did not justify the negative publicity the Force suffered.

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[20] Inquiry transcript, vol. 13 (Dec. 7, 1988): 113.

(6) The Greenfield gun

During lunch hour on September 13, 1984, Mr. W. Greenfield attended at Police Headquarters in St. Catharines, and turned in to the front desk a Hopkins and Allen revolver. It was registered in the name of his deceased father, and the family wanted to get rid of it.

A civilian employee, Donna McIntosh, was the only person at the front desk, and this was her first day at the job. She went to the office of Staff Sergeant Hill for instructions. The Staff Sergeant was on his lunch hour, and Sergeant Allan Marvin was acting in his place. Marvin told Ms McIntosh to fill out a report on the gun. Ms McIntosh filled out a GOR, and told Greenfield he would receive a copy of it in a week. After about half an hour, Ms McIntosh's partner, Ms Cheryl Granton, returned from lunch and told her the report should have been a property report, and they filled out a new report. Ms McIntosh then took the gun and the property report and left it on the Staff Sergeant's desk. Neither she nor Ms Granton can recall whether anyone was in the office at the time. Apparently neither the gun nor the report has been seen since.

After a week, Mr. Greenfield inquired about his copy of the property report, and an investigation failed to find any record of the gun or of the report.

Mr. Shoniker, Board counsel, produced to the Commission a written summary of the matter, with an allegation that Staff Sergeant McLaren would testify that "Gayder stepped in and stopped the investigation when it started to look like Marvin took the weapon" The Commission investigators accordingly did an investigation.

Both Marvin and Hill testified that they had no recollection of ever seeing the gun. The original investigation was carried out by Staff Sergeant Newburgh and Sergeant Terry McLaren. They were unable to establish what happened to the gun, and reported that the easy accessibility to the Staff Sergeant's office made it possible that any one of a number of people could have taken the gun, and that there were "no known suspects in this matter." Deputy Chief Walsh, who had ordered the investigation, reviewed the investigation with them and signed the report on December 13, 1984. There is no evidence that Gayder "stepped in and stopped the investigation." Both Newburgh and McLaren testified that Gayder had not interfered in the investigation in any way, and that neither had told anyone that he would testify to that effect.

It is apparent that someone took the gun, but what happened to it is not known. The registered ownership has not been changed.

I conclude that the evidence does not support the allegations against Gayder or Marvin.

(7) Sergeant Z

In February, 1991, while the Commission was awaiting the outcome of prolonged procedural and legalistic discussions amongst some of the counsel regarding the delivery of submissions to the Commission, it came to the attention of the Commission investigators that Sergeant Z of the NRPF might have transferred an unregistered restricted handgun to a fellow officer who was subsequently charged with possession of the gun. Investigation revealed that Z was a gun collector, and it was ascertained that he, over the years, had 84 firearms registered in his name. An attempt was made to trace each firearm and ascertain the circumstances of it coming into Z's possession, and a history of each gun and a background history chart was prepared for each identified weapon. Z and five of his fellow officers and superiors who had been involved in NRPF firearm registrations were interviewed. No obvious irregularities sufficient to justify further action were discovered. Copies of all documentation and interviews in relation to the matter in the form of four lengthy briefs were delivered to all counsel on April 16, 1992, and no counsel indicated they wished to have evidence called in that regard.

However, while I was drafting my report, it came to my attention that on June 30, 1992, Z had been charged under the *Police Services Act* with making a false statement on an application to register a restricted weapon, viz: a .38 calibre handgun. On July 21, 1992, he pleaded guilty, and was assessed loss of four days leave. The bizarre facts require comment, but because the matter arose too late to be investigated by the Commission, I do not refer to the individual in question by name. I obtained a copy of the trial proceedings which were held before a superintendent of an outside police force. It appears that a citizen, wishing to get rid of a handgun, had called the local police station, and the constable in charge had asked Constable Y to pick up the gun. Constable Y did so, and, in answer to his question as to what she wanted done with it, was told by the citizen that she "wanted him to do with it what he was supposed to." Knowing that Sergeant Z, his superior officer, was a gun collector, Y telephoned Z, who was on vacation, and was told by Z to keep the gun in his desk until Z returned. On his return, Z applied to register the gun in his own name, and for a permit to move the gun from the citizen's residence to the police station, and thence to his own home. His supporting affidavit stated that the gun was then at the citizen's home. The application went to the Force's firearms officer, who issues gun registrations. A routine investigation revealed that the statement of the gun's location was false, and the charge of making a false statement was laid against Z, as was a charge against Y of failing to enter the firearm in the Force property system.

The matter has been dealt with by the proper authorities, and is therefore not one in which this Commission would normally be interested. I make note of it only because of the alarming implications. Each of these officers had more than 20 years of service with the Force. During the sentencing process, each was spoken of in the highest terms by the NRPF inspector who prosecuted the charges. Both must have been aware of the emphasis placed on questionable acquisition of firearms during weeks of evidence at this Inquiry, and of the requirement to properly enter such firearms into the property system. Z certainly knew that he himself had been recently investigated in that regard. With that knowledge, it is incredible that a police officer with over 20 years' service, and presumably the intelligence and experience to justify promotion to the rank of sergeant, would witlessly engage in the very conduct that had been the subject of so much adverse comment and criticism at this Inquiry, and had resulted in an investigation of his own gun collection. The same applies, to a lesser extent, to Constable Y.

If this incident were truly indicative (and I am unwilling to believe it is) of what little has been learned by other members of the Force during the excruciating examination of questionable conduct throughout the four years this Inquiry has been in existence, it would be very discouraging to those who have been attempting to chart a new course in an effort to restore the public's confidence in the NRPF. I can only hope that the report of this incident will bring home to members of the Force the harm caused by momentary thoughtless conduct, and the importance of using good judgement and common sense in carrying out their duties at all times.

(E) OTHER PROPERTY ALLEGATIONS

(1) The Key diamonds

In May 1972, one William Key was charged with auto theft, and some diamonds found in his possession were retained by the Force due to suspicion that they had been stolen in New York. They were processed in accordance with Force Property policy. On July 12, 1974, they were forwarded from the Stores to Chief Shennan who directed Superintendent Bevan to place them in his safe. There they remained until June 1982 when Superintendent Bevan had them appraised, and their value was placed at $1,500. In accordance with a memo from then-Deputy Chief of Police James Gayder, the appraisal was placed with the diamonds in the Force accountant's safe pending auction arrangements. However, they remained in the safe until they were removed by the IIT in May 1987 in the course of their investigation.

The IIT posed the following question to the Attorney General: "Considering all the circumstances by not having the property returned to Key, who might have a lawful claim. And in the event that he didn't; by not disposing of the goods as dictated by the *Police Act*, was Theft as defined in the *Criminal Code* committed?" Wolski's reply pointed out that the allegation of theft was against Gayder, but that he at all times merely exercised that control required of a police officer, and at no time exercised any control or right of ownership as a private citizen, and that accordingly there existed no reasonable and probable cause for the laying of a charge. He suggests that at most there could be criticism that the diamonds were not earlier sold at auction. In its critique to the Board of Wolski's report, the IIT concurred with his finding. All counsel at the Commission hearings agreed there was no criminal conduct involved. I conclude that although there was a laxity or oversight in not disposing of the diamonds in accordance with Force policy, there was no "misconduct" in relation to them.

(2) The silver tea service

On April 4, 1982, two Fort Erie youngsters found three plastic bags hidden in a field. Amongst articles in the bags was a silver-plated tea service. The articles, presumably loot from a break-in, were turned in to the Fort Erie detachment of the Force and an occurrence report was made out. The owner not having been located after more than 90 days, in accordance with Force policy the articles were sent to Quartermasters Stores at 11 Neilson Street, St. Catharines.

There is no indication in the documentation that the boys made any request that, if the owner was not found, the articles should be returned to them as finders, but now, as young adults, they state they would like to have the tea service.

Force policy at that time was that, if articles coming to stores could be of use to the Force, (e.g., calculators for the accounting department or tools for the garage), they would be signed out to that department, rather than being auctioned. The officer in charge was aware that a new police headquarters was being built, and called Deputy Chief of Administration Gayder, to enquire whether the tea service might be suitable for the new boardroom. Gayder expressed interest, and the tea set was signed out in the store records to the Deputy Chief's office. Upon being delivered to the Deputy Chief's office, it was left in its box and stored in a cupboard.

In early 1976, when the storage cupboards were being rebuilt, Staff Sergeant Miljus of Quartermasters Stores was instructed to remove the box containing the tea service to some other storage area, and he placed it in a storage area set aside in the basement for the Administration Division. In February, 1987, it was found there and was turned over to the IIT.

In its report to the Attorney General, the IIT posed the question: "Considering Section 18 of the *Police Act of Ontario*, which dictates how the Board of Commissioners of Police may dispose of property, the owner of which cannot be found, and all of the circumstances surrounding the tea set: has James Gayder committed the offence of Theft, as defined in the *Criminal Code of Canada*?" Mr. Wolski, in his reply, points out that the tea set never left the police building, and that the evidence suggested that it was intended for use by the Chief in his office. He concluded that no reasonable and probable grounds existed to charge Gayder with theft of the tea set.

The IIT, in its critique to the Board, suggested that Wolski had misstated the evidence regarding the Chief's use of the set for tea, and contended that the tea set was the property of the Board and should have been auctioned under section 18 of the *Police Act*.

I conclude that there was no misconduct in relation to the tea service. While it may not be strictly in accordance with Part IX of the new *Police Services Act*, I recommend that the tea set be disposed of in the manner provided by the policy in effect at the time of its coming into the possession of the Force; that is, that an attempt be made to locate the owners with a view to returning the tea service to them, failing which it should be returned to the finders or disposed of as provided in the new *Act*. I shall be recommending an amendment to the *Act* to make it clear that a Chief has the discretion to return found goods *in specie* to the finder.

(3) Radios

Between May 26, 1981, and December 31, 1985, Staff Sergeant Michael Miljus was in charge of Quartermasters Stores. On December 10, 1981, the Force purchased a marine radio at a cost of $636.65 and installed it in a Force marine rescue boat. In early 1983 the boat was sold, and the radio was removed and stored at 11 Neilson Street. On March 29, 1983, Acting Deputy Chief Ronald Bevan sent a memo to Miljus advising that Acting Chief Gayder had authorized Bevan to sign out the radio, which was now surplus, for evaluation and storage in his office pending mounting it in his personal boat, if he decided to buy it. The radio was signed out to Bevan, but in August, 1983, it was returned and installed on a new Force rescue boat, where it has remained. On being questioned, Miljus testified that, as surplus Force property, it should have gone to auction in the normal way.

On January 1, 1983, a CB radio was seized from a burglary suspect who was later convicted. The owner could not be located, and the radio was stored at 11 Neilson Street pending auction. On May 10, 1983, at Bevan's request, Miljus delivered the radio to Bevan for installation in his personal boat. On September 30, 1988, the Commission investigators located the CB radio in the Emergency Services Branch storage area. The officer who took over the unit in June, 1987, saw it there at that time, but there is no evidence how long it had been there before that.

Being unaware of the fact that the radio had been returned, the IIT in its briefs sent to the Attorney General, stated that Bevan had converted the CB radio to his own use, and that Miljus was a party to the conversion. They posed the question: "Considering all the circumstances with respect to the two radios, did Staff Sergeant Miljus commit offenses of Theft and Breach of Trust as defined in the *Criminal Code of Canada*? Furthermore, did he violate the *Police Act of Ontario*?"

Superintendent Bevan retired on September 20, 1985 and died on October 2, 1987, without being interviewed in this regard. All counsel agreed that although the circumstances warranted an investigation by the IIT, the evidence as developed "indicates that the individuals involved were guilty of no wrongdoing."[21] I agree, subject to my previous observations about the shortcomings in the administration of the property system at the time.

(4) The trailer hitch

In April, 1985, a 1985 Pontiac was leased for Chief Gayder, and in May, 1985, Deputy Chief of Administration Parkhouse instructed Quartermasters Stores to arrange for installation of a trailer hitch at a cost of $328.28. The account was paid by the region out of the Force budget on the authority of Deputy Chief Parkhouse, Inspector Stevens of Quartermasters Stores, Force bookkeeper David Noiles and Mrs. Allen, the authorized member of the Board. There was no evidence that Gayder used the hitch for hauling police equipment, and the IIT concluded that Gayder, who was an avid fisherman, used it for pulling his boat trailer. Mrs. Allen, by then retired from the Board, was interviewed by Sergeant VanderMeer on April 24, 1987. In the transcript of her interview, she stated that there were no restrictions placed on Gayder's use of the vehicle, and he could use it as he wished. Under what can only be characterized as rigorous cross-examination by the Sergeant, she reluctantly agreed that she would not have approved of the purchase of the trailer-hitch had she been advised that it would not be used for police work, but she nevertheless reiterated that she felt that what the Chief asked for on his Force car should be approved. In his report, Wolski states that a former police commissioner indicated that the Chief previous to Gayder had Board authorization for installation in his car of a stereo system which could not be for police purposes.

The IIT asked whether Gayder had committed a breach of trust in relation to the trailer-hitch, and Wolski reported that there could be no reasonable and probable grounds for such a charge. The IIT reported to the Board that it agreed with Wolski's findings, and I concur.

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[21] Inquiry transcript, vol. 77 (June 19, 1989): 76.

(5) The Reintaler knife

On November 21, 1982, one Reintaler was arrested by an officer of the Force, and a spring knife was found in his boot. On April 15, 1982, he was convicted of possession of a prohibited weapon. At the conclusion of the trial, the knife was returned to Stores, and the records indicate that it was later released to the Deputy Chief of Administration (who at that time was Gayder) "for disposal." The suggestion was that it was intended for the Force museum. The knife was found in closet 374 on February 24, 1987. The IIT report to the Attorney General stated that the court had ordered that the knife be confiscated and destroyed. This conclusion presumably resulted from an interview with the investigating officer, his statement apparently having been based on assumption only. No attempt was made to confirm that there ever had been such an order, in spite of the fact that the allegation of Gayder's illegal conduct in the IIT's report to the Attorney General relied on the existence of such an order. A transcript of the trial evidence produced for the Inquiry revealed that no such order was made.

In its report the IIT stated that there was no evidence that Gayder or any other officer had sought approval under the *Criminal Code* to retain weapons for the purpose of exhibiting them, or for delivery to a museum. The IIT posed the following question to the Attorney General: "Considering all the circumstances: did James Arthur Gayder commit offenses of Possessing a Prohibited Weapon and Theft as defined in the *Criminal Code of Canada*?" Although Wolski at the time was not aware that there was no indication of any court order for destruction of the knife, on the facts given to him he concluded that there were no reasonable and probable grounds for laying a criminal charge.

In its critique presented to the Board, the IIT submitted that Wolski had failed to consider whether Gayder had committed offences contrary to section 116 of the *Criminal Code* for violating a court order. Since the Inquiry investigation established that there was, in fact, no such order, and since the evidence indicates the knife never left the police building, I find no misconduct in relation to the Reintaler knife.

(6) Lawrence Quattrini

Lawrence Quattrini was Administrator for the Board of Police Commissioners from July 15, 1978, until early in December 1989. In the middle

1980s, a series of rumours circulated concerning alleged conflicts of interest in connection with his duties. One of the CBC morning news broadcasts by reporter Gerald McAuliffe, delivered on April 10, 1984, reported that the Thorold Police Detachment was located in a building on the main street of Thorold under a lease from the owners, the father and brother of Lawrence Quattrini, who was identified as the executive secretary of the Police Commission. The report stated that Lawrence Quattrini "says that everything is above board and there's no conflict of interest," but the report went on to point out that it was a "rush deal," that the lease was originally for one year, but was extended for another five years to 1986, and that Quattrini said the renewal was never approved by the Police Commission. Investigation by the Commission investigators disclosed that a formal lease was executed by the region for one year from January 1, 1982, to December 31, 1982, and continued thereafter without any formal extension, with the full knowledge of the Board and the region, which paid the monthly rental.

A further rumour arose out of an allegation received by the IIT on March 19, 1987, that Quattrini was using a Board MasterCard credit card for his own benefit by purchasing propane on the card and at the same time claiming mileage expenses from the Board. Investigation of Board records revealed that Quattrini's Board credit card was not used for propane purchases, but that he used his private car on Board business, and, with Board approval, charged propane purchases to the Force account at the reduced rate available to the Force, and these purchases were then charged to him and paid back to the Force. Following the complaint, the practice ceased.

Further rumours arose out of a McAuliffe CBC broadcast on April 11, 1984, which stated that Quattrini received from the Board a $90 a month car allowance, and also charged the Board for mileage expenses, part of his car insurance, and half the annual service charge on his personal American Express credit card as a Board expense. Investigation revealed that Quattrini was not issued a Board credit card until 1983. During 1981 and 1982 he used his personal credit card for Board expenses, and charged half the annual service charge to the Board with Board approval. As part of his duties as Board Administrator, Quattrini was a member of the Licensing Committee and was required to maintain liaison with the elected officials and senior municipal officers on licensing matters, which entailed considerable travel in his private car. He was granted a monthly allowance of $99 for vehicle expenses within the region and, for travel beyond the region, he was allowed 11 cents a kilometre. Because he was using his private vehicle for Board business, his vehicle insurance premiums were increased, and he was allowed to charge the difference as an expense. For 1989, his total insurance premium was $1,023 of which he charged $115 to the Board. These allowances were all sanctioned by the Board of Police Commissioners.

The IIT received an allegation that between June 1982 and December 1986, Quattrini frequently borrowed money from the Board's petty cash fund. Investigation revealed that the allegation was true, but that, while there was apparently no secrecy or intention to deceive, and the money was always replaced within a short time, the practice did cause inconvenience to staff members. Obviously, the Board was temporarily deprived of the funds, and the practice was improper. Upon the matter being brought to her attention, on April 21, 1987, Mrs Taylor, as Board chairman, directed that the practice cease immediately.

The last allegation in this series investigated by the Commission investigators was in regard to the purchase by Lawrence Quattrini of a 1981 Ford station wagon, which had been traded in to the dealership by the Force that same day. It was alleged that following the purchase, new tires were purchased from Firestone Tire for the vehicle and charged to the Force. By this time, the repair records for this vehicle had been destroyed in the ordinary course. However, Mr. Quattrini produced to the investigators a Firestone Tire invoice, dated August 24, 1982, for two tires at a cost of $160.16, charged to the NRPF, together with his personal cheque for $160.16, stamped "Paid," payable to the Niagara Regional Police Department, and a receipt for that amount dated October 10, 1982, signed for the Force by the Force accountant.

In respect of all the above incidents relating to Lawrence Quattrini, all counsel agreed that the evidence as developed indicated "that the individuals involved were guilty of no wrongdoing,"[22] and I agree.

The existence of such rumours, extremely harmful as they are, not only to the persons involved, but to the Force itself, graphically points up the problems created when people in a position of influence in the Force, even when properly authorized, personally participate in advantages, not available to everyone, but available to the Force because of its importance to the community. These practices had apparently grown up over the years, and the Board properly put an end to them.

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[22] Inquiry transcript, vol. 77 (June 19, 1989): 97.

(7) Gayder and two bicycles

On March 29, 1989, Constable George Onich reported to the Inquiry investigators that he had been told by Constable Harley Turner, Property Officer at the time, that James Gayder, while Deputy Chief of Police, had taken two bicycles which had been turned in to the Property Office as found or stolen, and which should have been sold at the police auction. Constable Turner, who was in charge of Property in 1976-77, was interviewed and stated that Gayder at no time took any bicycles from his stores, and the Property records revealed no such information. It is possible that there was some confusion with an occurrence mentioned in other evidence in another phase of the Inquiry to the effect that Chief of Police Harris sometimes gave bicycles to needy families, and on one occasion gave two bicycles to nurses visiting from another country. In any event, all counsel agreed that the evidence, as developed, indicates that the individuals involved were guilty of no wrongdoing. I concur.

3 FORCE RESOURCES

(A) QUARTERMASTERS STORES

The background

Following amalgamation on January 1, 1971, Albert Shennan was Chief, and Donald Harris and James Gayder were Deputy Chiefs. While they built up the Operations Division, Inspector Ronald Bevan was given the responsibility of building the Administration Division including Quartermasters Stores, usually referred to simply as "Property" or "Stores." Sergeant (later Inspector) John Stevens was placed in charge of Stores, reporting to Bevan. The stores unit started at 68 Church Street, St. Catharines, then moved to Garden Park, then to 277 Church Street, and finally in 1977, to 11 Neilson Street, where it is presently located.

The various locations left much to be desired as to space and facilities. Purchase, maintenance and trading of Force vehicles have always been part of the Quartermaster's duties. Lack of specialty equipment has always meant that some of the vehicle repair and maintenance work had to be contracted out to local garages. As well, following amalgamation, each division had a supply officer, whose job was to order supplies and keep track of what vehicles required oil changes, maintenance and repairs (which services were supplied by a local garage that had tendered for police vehicle repairs), and report to the Quartermaster.

Immediately following amalgamation, some divisional commanders were reluctant to have "their" supply officer reporting to the headquarters unit, and this caused additional problems. The Quartermaster's unit did not keep a large inventory, and items were ordered as required. This remained the case as late as 1981, when Inspector Stevens left the unit.

On September 18, 1978, Reg Ellis was hired as the first Force mechanic, and because of lack of equipment and the distance of the police garage from the outlying detachments, many repairs continued to be done by local garages. On May 26, 1981, Staff Sergeant Miljus replaced Stevens, and he in turn was replaced on January 2, 1986, by Staff Sergeant (now Inspector) Michael Locke.

In the late 1970s, the Force had stopped having uniforms made-to-measure, and started to purchase and keep on hand "stock" sizes of uniforms, jackets, raincoats etc. During Miljus's tenure, the inventory of items such as uniforms, police equipment and office supplies increased considerably, but still without a structured inventory or audit system being established, due, in a large part, to the fact that staff increases did not keep up with the growth and needs of the Force. Locke identified numerous problems respecting the unit, and, in particular, vehicle fleet management, which he outlined in his 1986 Vehicle Report. He reported that the Force operated a fleet of nearly 200 vehicles travelling over seven million kilometres annually. The cost of fleet purchases, maintenance, fuel, licences and insurance was approximately 1.6 million dollars. He pointed out that Neilson Street vehicle repair facilities are adequate for only the vehicles of headquarters and N°. 1 Division based in St. Catharines. In the other divisions, Force vehicles were repaired at private facilities, and labour costs were high. Supply clerks in the detachments might not have the expertise to effectively control vehicle repairs and maintenance, leaving them vulnerable to suppliers and repairers in relation to costs, the necessity and adequacy of repairs, and priority in obtaining service. As well, much better discounts could be obtained by the larger purchasing power of one central facility doing in-house repairs.

Although the problems at Neilson Street were known to the Board, and preliminary steps were taken to plan new facilities, no commitments were made, apparently because the capital cost of an extensive and much needed addition to Force headquarters and the purchase of a computerization package took priority over the Quartermasters facility.

After his arrival at Neilson Street, Locke developed a vehicle inspection program whereby all fleet vehicles were scheduled for regular maintenance, with a computer program to record and analyze the cost of operating and maintaining each vehicle. Necessary auto parts are obtained and kept on hand, and the stock is controlled by a manual inventory system. Uniforms, equipment and office supplies are inventoried and controlled by a manual system. The efficiency of the unit has been greatly improved, and Inspector Locke is to be congratulated for his efforts in the face of inadequate facilities.

(B) THE FORCE GARAGE

The background

The issues revolve mainly around the operation of the Force garage located in an old building at 11 Neilson Street, St. Catharines, some three miles from Force headquarters, and involve principally the repair of private vehicles by the then-Force mechanic, Reginald Ellis. The garage was opened late in 1977, or early in 1978, and Ellis was hired as its civilian mechanic on September 18, 1978. At that time the Force had very little in the way of mechanics' tools or equipment, and no budget for more. As a result, Ellis was hired under an arrangement between himself and then-Chief Harris whereby Ellis would bring to the garage and use for Force purposes his own tools and equipment, said to be worth $25,000 to $30,000 and, since this would prevent him from continuing a sideline as a private motor mechanic at his home, he was permitted to work on private vehicles for compensation during his lunch hour. Ellis is a Class A mechanic. A memo dated September 23, 1981, from Superintendent Bevan to Acting Inspector Swanwick confirms that, by an agreement made "some time ago," Ellis was permitted to use his own tools to service non-Force vehicles during his lunch hour. A memo from Chief Harris to Ellis dated February 12, 1982, permitted Ellis to work part-time as a mechanic outside the Force, presumably in other garages, in order to maintain his mechanic's license.

Ellis, as Force mechanic, had many contacts with the firms that supplied the Force with both motor vehicles and motor vehicle parts and materials, and he also contracted out some of the work that could not be done in the Force garage because of lack of equipment, such as body work and paint jobs. Ellis had a good relationship with these suppliers and garages, but it was well known that he haggled and negotiated with them to obtain good prices for the work being done for the Force. As a result, he was also in a position to bargain for good prices for parts or equipment he required for the repairs to the private vehicles he was servicing.

It was generally known throughout the Force that Ellis did repair work on private vehicles belonging to Force members (mainly senior officers) at the Force garage, and until the fall of 1986, it excited no particular attention.

(1) Repairs to privately owned vehicles

For some time, Ellis and his wife had been separated, and their relationship in October, 1986, had become extremely acrimonious. On October 22, 1986, at a meeting of senior officers of the Force, Mrs. Elizabeth Parnell, secretary to then-Chief James Gayder, reported a telephone call she had received from Mrs. Ellis. Mrs. Ellis expressed her dissatisfaction with the way the Force had failed to handle complaints she had made against her husband. She stated she had a list of private vehicles that had been repaired by Ellis at the Force garage and, apparently unaware of the Harris-Ellis arrangement, threatened that unless her complaints against her husband were handled to her satisfaction, she would release the list, with license numbers and owners' names, to the *Standard* (a local St. Catharines newspaper that had been critical of the Force).

Chief Gayder turned the complaint over to the Force Complaint Bureau for action, but Deputy Chief John Shoveller, recently appointed as Deputy Chief, Administration, felt the matter fell within his area of responsibility. He was unaware of Ellis's arrangement regarding private work, and assigned Sergeant Cornelis VanderMeer, head of the St. Catharines Fraud Squad, to make inquiries into the operation of the garage, and particularly into Mrs. Ellis's allegations. In February, 1987, Shoveller, by then Acting Chief, became aware of the September 23, 1981, memo from Inspector Bevan confirming Ellis' right to do private work. Since no specific mention was made of use of the Force garage, he interpreted it as not authorizing Ellis to use the Force garage for private repair work, although it is difficult to understand how Ellis was expected to do such repairs during his lunch hour other than in the garage, taking into account the problem of transporting heavy and diverse tools to some other location. On February 11, 1987, Acting Chief Shoveller wrote a memorandum to Staff Superintendent Gittings referring to the authorization memo of September 23, 1981, and directing that the use of the Force garage for anything other than Force vehicles was to cease immediately.

(2) Parnell paint job

In the late fall of 1986, Deputy Chief Shoveller attended at 11 Neilson Street to discuss with then-Staff Sergeant Michael Locke, who was in charge of Quartermasters Stores, the concerns he had with the operation of the garage and the stores. During the discussion, it was revealed that Ellis had arranged for a paint job on Mrs. Parnell's private car. Locke spoke to

Ellis, and Ellis told him that he had arranged for the paint job at Checkpoint Chrysler; that Mrs. Parnell had paid for it; and that he would obtain a copy of the invoice. Ellis did so and gave it to Locke. It was addressed to Mrs. Parnell in care of Chief Gayder's office, and indicated that it had been paid for by cheque. Shoveller called Locke a week or so later, asking about the paint job, and Locke forwarded the invoice to him.

Shoveller spoke to VanderMeer about the matter in December of 1986. Shoveller says he was satisfied, upon receiving the invoice, that Parnell had paid for the work, and his concern was that Ellis was using his position to obtain a "deal" for the private cars of Force members. On his return from holidays early in January, 1987, Shoveller gave VanderMeer a copy of the invoice, but does not recall whether he told VanderMeer that he was satisfied about the payment.

VanderMeer was not satisfied because the invoice was addressed to Parnell "c/o Police Chief Staff," and he suspected that the account had been paid out of Force funds. Since he did not know what bank the cheque was drawn on, and in order to avoid alerting Gayder or Parnell about his inquiries, he contacted the headquarters of several chartered banks to ascertain the source of payment for the paint job.

One of the bank persons contacted in Toronto was a friend of Gayder's, who advised Gayder. Gayder, as Chief, was outraged that such an inquiry was being made without his knowledge, and questioned Parnell about the payment. On learning she had paid personally, he encouraged her to initiate an internal complaint against VanderMeer.

During the investigation of this complaint by the Complaints Bureau, VanderMeer was interviewed and was shown a copy of the Checkpoint Chrysler invoice with an attached bank deposit slip of that firm dated October, 1984, indicating payment by Parnell, and VanderMeer was then convinced that there had been no misconduct so far as payment was concerned. However, the paint job included a considerable amount of body work because of rust damage to Parnell's car, which was a 1977 Oldsmobile, so was about eight years old. VanderMeer suspected that there had been some influence exerted to obtain an unusually good price for the work.

Ellis is not sure whether it was Gayder or Parnell who asked him to obtain an estimate. Gayder denies any involvement. The body of the invoice stated that it was for "repair and paint complete $1,450," and then at the bottom set out the total cost consisting of "labour $1,450, materials

$150, tax $112" for a total of $1,712. There was no further breakdown of the work done. For what was done, the account was obviously quite moderate. The body shop man from Checkpoint Chrysler was called as a witness, and stated that, while the price was a very good one, nevertheless it was reasonable, due to the fact that the price had to be within a certain range in order to make it worthwhile to have the work done on a car seven or eight years old, and indicated that Checkpoint Chrysler was glad to have the work in order to keep its employees busy.

Counsel for both Chief Shoveller and for the Board suggested in their cross-examinations that Gayder had improperly influenced Ellis to get a special deal for his secretary. In this regard, Ellis was asked if he was trying to maintain a good relationship with Gayder, and he replied, "... you've got to keep your boss happy."[1] The Board counsel have emphasized this reply as indicating improper conduct on the part of Gayder. Commission counsel made no specific submissions as to misconduct on the part of those involved, but pointed out that there was a problem in that Ellis appeared to have used his influence, as the Force mechanic, to obtain a benefit for the Chief's secretary because he felt that, "You've got to keep your boss happy." Ellis's reply is indicative of an attitude that is not uncommon on the part of an employee, and there is no evidence that Gayder encouraged it, or derived any benefit from it. Counsel for the Force submits that a proper investigation would have immediately established that Mrs. Parnell had paid for the paint job, and that should have been the end of the matter.

On the evidence, I cannot find misconduct on the part of either Mrs. Parnell or Gayder, but the allegations point up the dangers of allowing the appearance of private work being done or arranged in the workplace. The Board counsel also submitted that it was improper for Ellis to make such arrangements and haggle for a good price during office hours, it being assumed that the call to Checkpoint Chrysler did take place during office hours, although Ellis could not recall whether that was so. Again, the loose arrangement regarding Ellis's working conditions make it unfair to impose strictures upon his working hour activities that had apparently never been discussed between himself and Chief Harris or anyone else, and I cannot conclude that his actions amounted to misconduct. While private telephone calls during working hours should be discouraged, the problem is not unique to the Force, is not generally viewed as a serious abuse, and has now been eliminated by an order expressly prohibiting the practice.

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[1] Inquiry transcript, vol. 71 (May 30, 1989): 101.

(3) The Parnell tire switch

As a result of VanderMeer's interrogation of Ellis in April of 1987, VanderMeer learned that sometime around March of 1986 (no one is very definite about the time) Parnell's car was in the Force garage for some service, and Ellis noted that the tires were in very bad shape. Neither Gayder nor Ellis is clear about who called whom, although Gayder believes Ellis called him, and Ellis believes Gayder may have called him to find out whether Mrs. Parnell's car was ready. In any event, Ellis told Gayder about the tire condition, and Gayder said to do whatever he could about it. Ellis does recall telling Gayder that the two rear tires were in bad shape, and that he replaced them with two tires that weren't much better. Gayder says that, in a telephone conversation, Ellis told him that he had had the two rear tires on Parnell's car replaced, and that the replacement tires were from a trade-in vehicle. He says he then asked Ellis if there was any problem with this, and Ellis said that there was no problem, that they were just two old tires that were scrap. The tires were entered as exhibits, and it appears that actually four tires were placed on the car, two being Bridgestones and two being Firestones. The Firestones were size 205s and the Bridgestones were size 215s. Evidence was given that there was something between 50 to 60 per cent of tread life left in the tires, although the sidewall on one of the tires was not very good.

When Mrs. Parnell arrived to pick up the vehicle, she was apparently told for the first time by Ellis that the tires had been changed, and she states he told her they were tires that were going to be thrown out. She assumed from something he said that only two tires on the back had been provided and asked what she owed, and Ellis told her she would have to pay for the changing and balancing by Direct Tire Co., and that the cost was $50, for which she gave him a cheque. She apparently thought nothing further about the matter.

Inspector Stevens, who was in charge of the garage and stores, had a conversation with Ellis in April or May of 1987, after Ellis' interview by VanderMeer. Ellis told Stevens that, having noticed Parnell's tires were badly worn, he called Gayder and stated that Parnell's car was ready, but that it would need tires and Gayder responded, "See what you can do." Ellis told Stevens that a police car was being traded that day to Checkpoint Chrysler, and that he had the tires switched from that car to the Parnell car. Prior to switching the tires, he called Gayder and told him that he had located some tires, but that Parnell would have to pay for the switching and balancing. Gayder told him to go ahead.

Considerable cross-examination by Board counsel involved the question of the ownership of the tires at the time of the switch. When a new vehicle is ready for delivery from the dealer, the old Force vehicle is brought into the Force garage, and police equipment such as sirens, flashing lights, etc. are removed, and if the tires are in good shape, the wheels will be transferred to another police vehicle, if there is one in the garage at the time, and the wheels will fit it. Tires cannot be removed from the wheels and then mounted on another vehicle's wheels, because there are no facilities for changing tires. Both Stevens and Inspector Locke (Stevens' successor) stated that it was Force policy that cars being traded in must be in good roadworthy shape, since that was the understanding when the trade-in was negotiated at the time of the ordering of the new replacement vehicle. However, as far as tires were concerned, the dealer would usually be installing new tires. The used-car manager from Checkpoint Chrysler gave evidence that this was the custom, and that, if Ellis had called him and asked permission to switch the tires, he would unquestionably have given him the firm's consent. He stated that, for safety certification purposes, he could not have sold the trade-in with two different sizes of tires, and that if the trade-in had come in with those tires on it, he would have removed them, replaced them with new tires, and stored the old tires as spares for older cars, "or something." The witness stated that the trade-in vehicle in question was a detective car without markings, and was given a safety check requiring the installation of four new tires, and that he considered that once the replacement car was delivered to the Force, the trade-in vehicle became the property of his company. It would appear, therefore, on the balance of probabilities, that property in the trade-in vehicle, including its tires, had passed to Checkpoint Chrysler at the time that they were removed and placed on the Parnell vehicle, assuming that the replacement car had been delivered before the old one was taken out of service.

Commission counsel submits that the removing of the tires and placing them on the Parnell vehicle was improper. He submits that there can be no doubt that the tires did not belong to Ellis, Gayder or Parnell, regardless of to whom they actually did belong – the Force or Checkpoint Chrysler. Gayder had good reason to know that the tires were coming from a trade-in vehicle, and in fact, Ellis believes he told Gayder that. Gayder had some idea of impropriety, in that he asked Ellis whether there was any problem with what Ellis had done, and stated in evidence that the reason he asked that question was that he knew that "... you can't take tires off of a police car and put them on a private car."[2] The responsibility was upon

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[2] Inquiry transcript, vol. 69 (May 24, 1989): 120.

Gayder to decide if there was any problem, not upon Ellis. Ellis's conduct can be excused to a large extent, because his Chief seemed to be blessing what he had done.

Submissions by Mr. Barr, for the Force, were simply that Mrs. Parnell had no reason to assume that there was anything wrong with what was done about the tires, that she paid the $50 she was asked to pay in relation to the switching and balancing, and that under the presumption of innocence, she should not have been, in effect, called upon to establish her innocence. He submits that the real question is why she was subjected to the type of accusations levelled against her by the IIT.[3]

I have no hesitation in concluding that it was very poor policy to allow work on private vehicles to be done in, or arranged through, the Force garage, and that the practice invited rumours of impropriety. Chief Harris, undoubtedly, was in a difficult situation due to lack of funding, but, at least in hindsight, it is apparent that he should have waited to open a Force garage until his budget allowed the provision of Force equipment.

While facilities at the Force garage were insufficient to permit switching of tires unless the wheels themselves were interchangeable, the Parnell tire exchange leaves an impression that the Force might have been able to benefit from the tires in question had the Force been prepared to pay the cost of switching them at a private garage as was done for Parnell.

In any event, it was improper for Gayder to allow tires from a trade-in vehicle to be exchanged for tires from his secretary's vehicle. To inquire from the garage mechanic whether there was any problem with the switch was an abdication of authority and indicated his concern with the propriety of the situation.

It would seem that Mrs. Parnell herself should have realized that the exchange was improper, although she apparently simply went along with an arrangement that she assumed was approved of. Ellis was at fault for suggesting the switch without clearing it with Checkpoint Chrysler, regardless of how sure he was of approval.

The whole situation was improper, and I understand that it has been corrected by Chief Shoveller. I strongly recommend that all necessary further steps be taken to ensure that it cannot happen again.

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[3] See p. 226.

(4) Reginald Ellis and alleged kickbacks

As already indicated, Reginald Ellis was a civilian Force mechanic from 1978 to 1988. Until January 2, 1986, the Quartermasters, who were responsible for the Property Section, were not mechanics, and the running of the garage was left pretty much to Ellis, who was not an administrator. According to Inspector Locke, who took over as Quartermaster on January 2, 1986, there was no adequate program for vehicle maintenance, repairs or parts purchase or inventory, and little room to store spare parts. During the Inquiry hearings, allegations were made that Force vehicles were being sent to outside garages for service or repairs, when repair bays in the Force garage were not busy, and that Ellis was working on private vehicles on Force time. The evidence is unclear as to whether Ellis did some private work during regular working hours when he was not busy on Force work, or during an extension of his lunch hour, but since he is no longer with the Force, and regulations no longer permit the privileges originally accorded to Ellis, the only importance of the issue is the lesson it teaches as to the inappropriate nature of such a policy.

In the course of their investigations in 1987, the IIT learned from Derwyn Woodhouse, a mechanic employed by a repair shop specializing in front-end work, that sometime in 1979 or 1980 Ellis, whom he knew slightly, telephoned him and asked what the cost would be for front-end alignments for Force vehicles. He testified that, upon a price being quoted, Ellis said: "If I send you the work, what's in it for me?"[4] He interpreted this to be a request for a "kickback," and answered: "Nothing." Ellis said: "I'll be talking to you" and hung up. He heard nothing more from Ellis. On April 12, 1988, Ellis appeared at a preliminary hearing in Provincial Court charged with demanding a benefit for himself under Section 383 of the *Criminal Code* in relation to the above incident, with stealing a battery, with defrauding the Force by causing unnecessary repairs to a Force vehicle prior to its trade-in, with stealing Force tires (in relation to the Parnell matter), and with breach of trust.

On May 3, 1988, all charges were dismissed at the preliminary hearing stage. Ellis's employment had been terminated by the Force at the time the charges were laid, and a settlement of an arbitration of Ellis's claim for wrongful dismissal was arranged. The settlement called for his reinstatement, to be immediately followed by his resignation and the payment to him of some $50,000 in damages, back pay and legal costs.

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[4] Inquiry transcript, vol. 92 (Aug. 21, 1989): 84.

Of the events referred to in the charges, the only ones dealt with by this Inquiry were the matter of the Parnell tires which has been reported on above, and the "What's in it for me?" incident. Both Inspector Stevens and Inspector Locke testified in the present hearings that Ellis was an unusually hard bargainer in obtaining quotations from garages and suppliers, and his style was variously described as "embarrassingly persistent" and "wheeling and dealing" and that he was a "grinder" in negotiations. Inspector Stevens stated he had frequently heard Ellis, when negotiating, openly say "What can you do for me?' which he interpreted as seeking a better deal for the Force. He had never heard him say "What's in it for me?"

Inspector Locke had heard Ellis use both phrases when negotiating, and the way they were used indicated that the "me" in both contexts meant the Force. Locke insisted, under vigorous cross-examination by several counsel, that Ellis was an honest person who had never taken so much as a rag from the garage. Ellis agreed that he used the phrase "What can you do for me?" meaning the Force, and was not sure whether he ever used the wording "What's in it for me?," but swore that whenever he used the word "me" in such context, he meant the Force. He insisted he had never sought or received any kickback or other benefit, and no evidence was produced to indicate that he had. "What's in it for me" has a more serious connotation than "What can you do for me?" although both phrases are open to the interpretation that a personal benefit was being sought. On the other hand, "What can you do for me?" can very well refer to "me" as representing the employer. Any conclusion as to what Ellis really meant must take into consideration the facts that the conversation in question occurred some nine years ago, that in a telephone conversation it would be easy to confuse "What can you do for me" with "What's in it for me," that Mr. Woodhouse was not familiar with Ellis's aggressive style of bargaining or his frequent use of the word "me" as representing the Force, and that there is no evidence of Ellis having demanded personal benefits in other cases.

As already noted, a very experienced provincial court judge concluded that there was insufficient evidence, even if believed, to justify putting Ellis on trial. Similarly, the evidence before me was much too equivocal to support a finding of misconduct or impropriety. However, the problem has been recognized and corrected by Chief Shoveller.

(C) CRUISER TRADES

Background

In the fall of each year, the Quartermaster reviews the status of Force vehicles in terms of mileage and condition, and prepares a report for senior staff recommending the purchase of replacement vehicles. Once approved, the Niagara Region's purchasing department prepares a tender form for the required vehicles with a proposed delivery schedule, spread out over the coming year, together with a list of the used vehicles to be traded in and showing the estimated number of kilometres on each at the anticipated time of trade. The tender form is distributed to suppliers throughout the Region. Although the suppliers are invited to examine the trade-ins, they seldom do, relying on the understanding that the trade-ins will have approximately the kilometrage at trade-in as stated, and be in reasonable condition and free of collision or glass damage. This is an unwritten guarantee, based on good faith built up over the years, which ensures the maximum trade-in allowance.

After a public opening of tenders, the purchasing staff forwards a report to the Board recommending purchases from the successful bidder in each vehicle class. Following Board authorization, purchase orders are placed, but the actual time of delivery will depend on several factors, including production schedules, the availability of the particular models and the projected date for trade-in of each particular trade-in vehicle.

Once the supplier notifies the Quartermaster that new vehicle deliveries will be commencing, the Quartermaster notifies the divisional supply clerks to check with him before authorizing major expenditures on a vehicle with an approaching trade-in date. Because of the uncertainty of new vehicle deliveries, pending such notification, it is simply a judgement call by the supply clerk as to whether or not a repair order should be issued.

(1) The excessive vehicle repairs allegations

During the 1980s, rumours circulated that members of the Force, particularly staff of Quartermasters Stores and garage, were purchasing former Force vehicles from dealers immediately after they had been traded in on the purchase of new Force vehicles. The suspicion was that the purchasers had obtained a special advantage because of their knowledge of the condition of the vehicle, and that in some cases, repairs or improvements were done to such vehicles just before trade-in.

The practice was that repairs costing less than $100 were at the discretion of the Force mechanic, between $100 and $200 required approval by the Quartermaster, and over $200 required approval from the Quartermaster's superior officer. The supply clerk at Quartermasters Stores testified that she was responsible for recording all repair work done on Force vehicles, and these repairs were recorded on a separate page for each vehicle contained in a ledger euphemistically referred to as "The Bible."

The Commission investigators found that Force members did, on occasion, purchase trade-ins, and they did a random sampling of the records of 25 (about 5 per cent) of the vehicles traded in between 1975 and 1986. None of these had been purchased by a Force member. In the three months prior to trade-in there was an average of 12 repairs per vehicle at an average total cost of $523.38. Almost half of the vehicles had body work and/or paint work in this three month period. During the three weeks prior to trade-in, 20 of the 25 cars in question had a total of 70 different repairs at an average cost of $126.38 per vehicle. One of the vehicles had a $342.99 partial paint job six days before it was traded.

It accordingly appears that, presumably because of the heavy use to which police vehicles are put, substantial, including cosmetic, repairs are frequently made to police vehicles shortly before they are traded, in order to maintain the efficiency and appearance of the Force. Evidence of such repairs to a vehicle which was shortly thereafter traded in and purchased by a police officer is thus not in itself evidence of impropriety.

Inspector Locke, an experienced licensed mechanic, analyzed the past maintenance records and concluded that there had been a large number of unnecessary repairs throughout the life of some vehicles. He testified that these occurred because records were not always checked, and because of the tendency of some dealers, not knowing the cure for a problem, and unaware of the maintenance history of the vehicle, to replace every related item in a scatter-gun approach. For instance, in the case of six particular vehicles, one had 23 replacement tires in two years, another had 18 tires within 90,000 kilometres, another had a total of 16 brake repairs (two within 1500 kilometres), another had 12 front-end alignments within 18 months (four within one month), another had spark plugs, rated at 35,000 kilometres, replaced four times within 19,000 kilometres (one of these being within 110 kilometres), and another had five propane converter overhauls within 40,000 kilometres, two of which were within only 800 kilometres.

These examples indicate a problem of poor management of a diversified fleet being serviced in decentralized areas. There is no evidence that there was any improper motive or benefit on the part of any Force member in any unnecessary repairs. With the problems now identified, the evidence indicates that they are being addressed, and should not occur in the future if recommended facilities to allow centralization of vehicle repair work are provided.

(D) IMPUGNED VEHICLE PURCHASES BY FORCE MEMBERS

(1) Rodney Marriott – 1979 Dodge

Force records indicate that between March 11, 1980, and June 30, 1980, four new tires were installed on Force vehicle 128, a 1979 Dodge Aspen, at a cost of $233.05. On June 20, 1980, it received body and paint repairs at a cost of $145. On July 11, 1980, it was traded to a dealer, and on July 18, 1980, it was purchased by Rodney Marriott, a civilian employee in the Force garage.

Both the IIT and Commission investigators investigated the matter. A Firestone invoice of March 11, 1980, covered installation of a new tire on this vehicle and one dated May 9, 1980, covered another new tire, as did a further invoice of June 16, 1980. Each invoice was signed by the patrol officer who took the vehicle to the Firestone garage. The June 20, 1980, invoice for $145 listed repairs to the left front fender and painting of the hood and fender and was signed by the Force mechanic.

Inspector Stevens, the then-Quartermaster, stated that damage repairs were always done before a vehicle was traded as a matter of policy. Rodney Marriott advised that when he was preparing the vehicle for the trade, he noticed it had comparatively low mileage, and decided to purchase it following the trade. He stated he had nothing to do with the new tires or repairs.

The IIT originally questioned whether Rodney Marriott was guilty of deceit in the circumstances, but did not include this matter in its report to the Attorney General. On June 19, 1989, all counsel agreed that, although the circumstances warranted an investigation by the IIT, "The evidence, as it has been developed to date, indicates that the individuals involved were guilty of no wrongdoing."[5] I agree.

(2) Clayton Marriott – 1982 Dodge Aries Station Wagon

A 1982 Dodge Aries Station Wagon, used by the Identification Unit, was traded to a dealer on April 14, 1986, and on the same day was purchased by Inspector Clayton Marriott. The circumstances were investigated by both the IIT and Commission investigators. Inspector Marriott stated that he wanted an older vehicle as a second car, and that his son, Rodney, who worked in the Force garage, had advised him that the station wagon was to be traded. Inspector Locke testified that in the three-and-one-half month period before the trade, $453.20 was spent on repairs, which was comparable to other vehicles of similar age and condition, and that he had advised Inspector Marriott that it was not a very good car and would need a new carburettor and a lot of other work. The IIT prepared a report but did not forward it to the Attorney General with their other material. All counsel agreed that, although the circumstances justified investigation by the IIT, the evidence "indicates that the individuals involved were guilty of no wrongdoing."[6] I agree.

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[5] Inquiry transcript, vol. 77 (June 19, 1989): 28.

(3) John Stevens – 1976 Ford

On July 7, 1981, a 1976 Ford (Unit 424), was traded by the Force, and on the same day Staff Sergeant (now Inspector) John Stevens purchased it from the dealer. Stevens had been in charge of Quartermasters Stores, including responsibility for the garage, but on May 6, 1981, was promoted and transferred to another post. Both the IIT and the Commission investigators investigated the purchase. It appeared that on May 18, 1981, two new tires were installed on Unit 424 at a cost of $167.06; on May 19, 1981, the radiator was re-cored at a cost of $83.46; and on May 25, 1981 the exhaust was repaired at a cost of $65.87. Inspector Stevens stated to the IIT that he was familiar with the car, and that the dealer offered it at a price that he was prepared to pay. He saw that the tires were in good shape, but had no idea when they were installed.

The IIT prepared a brief which it forwarded to the Attorney General with its other briefs, asking whether: "Considering all the circumstances, and keeping in mind that Stevens left supply on May 6, 1981, several weeks before car number 424 was traded," did Stevens commit fraud and breach of trust under the *Criminal Code*, and did he violate the *Police Act* by using his position as a police officer for personal advantage? No written response was received from the Attorney General in relation to this matter. It was agreed by all counsel that, although the circumstances were such as to warrant investigation by the IIT, the evidence indicates "that the individuals involved were guilty of no wrongdoing."[7] I agree.

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[6] Inquiry transcript, vol. 92 (Aug. 21, 1989): 52.

(4) Ronald Bevan

(a) 1973 Matador

From January 1, 1971, to October 11, 1977, Ronald Bevan was an Inspector in charge of Finance and Personnel, which included the purchase and supply of the needs of the Force. On October 11, 1977, he was appointed superintendent in charge of Administrative Services. He retired on September 20, 1985, and died on October 2, 1987. On November 2, 1978, the Force traded a 1973 Matador to a dealer, and it was purchased by Bevan on November 6, 1978. According to the date on the relevant invoices, on November 1, 1978, two new tires were installed at a cost of $71.33 and on November 3, 1978, a muffler was installed at a cost of $27.28. Both invoices were billed to the Force.

The IIT prepared a brief, which was not submitted to the Attorney General, which stated: "Bearing in mind Bevan's knowledge as it related to the vehicle, do the last two repairs, the tires and the muffler, constitute the offence of Fraud and possibly Breach of Trust, given Bevan's fiduciary position."

The Commission investigators investigated the incident and prepared a brief. After reviewing both the IIT and Inquiry briefs, all counsel agreed that the evidence as developed "indicates that the individuals involved were guilty of no wrongdoing."[8] I agree.

(b) 1974 Volkswagen

On May 4, 1977, the Force traded a 1974 Volkswagen, and on the same day it was purchased from the dealer by Superintendent Bevan. An invoice dated May 18, 1977, for installation of a windshield on this vehicle was billed to the Force. Both the IIT and the Commission investigators investigated the purchase. The installer no longer had records indicating when the work was actually done. The IIT concluded that the offence of fraud and possibly breach of trust had been committed by Mr. Bevan. Because Force financial records are destroyed after seven years, no records of the payment, other than the vehicle maintenance record, are available.

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[7] Inquiry transcript, vol. 77 (June 19, 1989): 35.

[8] Inquiry transcript, vol. 92 (Aug. 21, 1989): 54.

Ronald Bevan's son, Inspector Vince Bevan, testified that his father was interviewed by members of the IIT on May 7, 1987, and made an appointment with them to have them call back to pick up some relevant receipts he intended to assemble. Vince Bevan stated that no one from the IIT returned, and his father spoke to Acting Chief Shoveller during the summer of 1987 about the matters the IIT had raised, and Shoveller said he would check. Vince Bevan testified that his father told him that on August 31, 1987, the day Acting Chief Shoveller was appointed Chief, Ronald Bevan had a conversation with Chief Shoveller who told him that "everything was looked after, not to worry about it." Vince Bevan produced the receipts his father had assembled for the IIT, which included a receipt to Bevan dated June 2, 1977, for painting the Volkswagen.

Mr. Barr, counsel for the Force, pointed out that the replacement of the windshield at the time of trade-in was in accordance with Force policy of trading in only vehicles in roadworthy condition. If the windshield was damaged at trade-in, it would be the Force's responsibility to pay for repairs so that it would pass a safety check. Because of the destruction of Force records which might have revealed the circumstances of the windshield replacement, and the failure of the IIT to obtain an explanation from Ronald Bevan prior to his death, it is not possible to conclude that any impropriety had occurred.

(c) 1979 Toyota

On February 22, 1982, a 1979 Toyota was traded to a dealer, and on February 23, 1982, it was registered to Brian Bevan, Superintendent Bevan's son, and on February 25, 1982 it was registered to Ronald F. Bevan, apparently for insurance purposes. Niagara Region's records showed an invoice dated February 24, 1982, for installation of a starter for this vehicle at a cost of $175.21. The "Bible" record on this vehicle indicates that on February 15, 1982, the vehicle was towed to the garage where the starter was installed. Vince Bevan's evidence was that installation was delayed due to the fact that the starter had to be ordered. Apparently no records of the installer remain to show the actual date of installation. Vince Bevan produced an invoice indicating that on February 25, 1982, Ronald Bevan had had the vehicle painted and the roof, right door and body side mouldings repaired at a different garage than the one which installed the starter. The IIT had none of this information, and it prepared a brief in which it concluded that Mr. Bevan had committed fraud and possibly breach of trust due to his fiduciary position. The brief was not included in the briefs forwarded to the Attorney General.

The only suggestion of impropriety lies in the fact that the sale documents indicate that Bevan bought the Toyota from the trade-in dealer three days before the starter was installed at the Force's expense, but after it had been towed to a garage for the starter repairs. An explanation for the delay in billing the Force was supplied by Vince Bevan's evidence. Putting the vehicle in roadworthy condition before trade-in was in accordance with Force policy. I conclude there was no wrongdoing.

(5) Michael Miljus

(a) 1976 Plymouth Fury

On July 15, 1981, a 1976 Plymouth Fury was traded, and on July 17, 1981, it was purchased by Staff Sergeant Miljus for $750. The evidence as to alleged repairs to the vehicle shortly before the trade is conflicting and recollections are confused. It is far from clear whether the witnesses were referring to the same vehicle. Although detailed records have been destroyed in the normal course, the "Bible" was available. As earlier indicated, it lists each Force vehicle on a separate page with a history of all service and repairs. According to the "Bible," on May 6, 1981, two new tires were installed on the Fury at a cost of $98.52. On July 3, 1981, the seat cushions were repaired at a cost of $91.75. The Fury was a "plain" or "unmarked" car, and when it was about five or six years old was assigned to the Thorold detective office where it was used by Sergeant Gerald Ryan and Sergeant Brian Nesbitt. Ryan testified that on May 6, 1981, two new tires were installed on the car on instructions from Michael Miljus. On that date, Miljus was on assignment to "C" Platoon in Niagara Falls on uniform duty and could not have given instructions for replacement of tires. It was not until May 26, 1981 that Miljus was assigned to Supply in St. Catharines.

Both Ryan and Nesbitt agreed that the tires and upholstery repairs were necessary. Ryan says Miljus ordered the cushion repairs, but Miljus cannot recall this. Ryan states that the car was a maroon colour, but that shortly after the cushion repairs, on Miljus's instructions, the car was repainted brown; it was given a tune-up, and a new battery was installed. There is no record of these latter repairs, which are the major source of the criticism levelled at Miljus. Nesbitt states that the car was burgundy but was repainted in a brown colour, and that the repainting was necessary, but he did agree that he might be thinking of a different car. Ministry of Transport records show the car purchased by Miljus to have been brown when originally registered to the Force.

Rodney Marriott, a civilian Force garage employee, testified that in the summer of 1981 he was looking at projected Force car trade-ins for possible later purchase by his father-in-law, John Vanderlee. He and Mr. Vanderlee examined a brown Plymouth Fury just prior to it being traded, and both stated that it was in "rough" condition, with rust spots and a worn interior, with no indication that it had been recently painted. Mr. Vanderlee decided he had no interest in buying it.

Marriott testified that a short time later he saw the same car in Miljus's personal parking spot, and assumed he had bought it. Miljus testified that he had decided to buy the car only after he learned that Vanderlee was not interested, that he had not ordered any work to be done on it, that he did not believe it had been recently painted and cannot recall the upholstery condition. Constable John Kennedy purchased the car from Miljus in February, 1983, for $600. He testified that the front seat was badly "sunken" and the paint was very faded and had a number of rust spots. He did not believe that it could have been painted within the previous two years. He scrapped it on July 14, 1983.

The "Bible" shows that repairs were done to the vehicle in May and July 1981, but that the last time the vehicle was painted was October 15, 1979, and at the same time some upholstery work was done. Neither the "Bible" nor the Region's microfilm records of paid invoices show any painting for this vehicle in 1981. The person in charge of the vehicle records testified that, on the basis of the records, Sergeant Ryan's evidence about a paint job for this vehicle sometime after July 3, 1981, "would simply be wrong."

The IIT prepared a brief on Miljus's purchase for the Attorney General, and asked whether Miljus was guilty of fraud and breach of trust under the *Criminal Code* and improperly used his position for private advantage as defined in the *Police Act*. No written response was received from the Attorney General.

I found Miljus to be a credible witness. The region and Force records appear to support his evidence and I can only conclude that the contradictory evidence resulted from confusion, possibly due to passage of time, about a paint job done on a different but similar vehicle. The other repairs are not different from those the Force normally authorized to keep a vehicle in good running order, even when a trade was expected in the near future. However, the evidence, once more, graphically illustrates the rumours, harmful to the Force as well as to the individual, that can arise from the practice of allowing Force members to purchase Force property.

(b) 1979 Ford Fairmont

A 1979 Ford Fairmont was traded on March 1, 1983, and was purchased by Miljus on the same day. Recent repairs to this vehicle were as follows:

January 18, 1983, rebuilt carburettor — $66.30;
February 15, 1983, signal light — $7.32;
February 23, 1983, steering repairs and parts — $56.84;
February 16, 1983, paint hood and tops of fenders, polish car, replace side mouldings — $321.

Ronald Feilde, the body shop manager from the garage where the work was done, and who gave the estimate for the paint job, stated that the paint on the car was faded, and the hood and fenders were worse than the rest of the body, so they were painted and the rest of the body was buffed to bring the colour up to try to match the new paint. He stated that at some point he became aware that Miljus wanted to buy the car, but could not recall whether he learned this at the time of giving the estimate, or when the car was traded.

Reginald Ellis also obtained an estimate for a complete paint job, but when Miljus gave the two quotes to Superintendent Bevan, Bevan instructed Miljus to just have the partial job done, because the car was due to be traded. Miljus testified at that time he was looking at an eight cylinder Chrysler as a possible purchase, and it was only later when he learned that the bigger car was not available that he decided to buy the Fairmont.

Because purchase of Force trade-ins was apparently not prohibited by regulations, or even discouraged by senior officers, and due to the equivocal nature of the evidence regarding the repairs to the Fairmont, it is not possible to conclude that Miljus was guilty of improper conduct. However, it should have been apparent to him that, being in charge of the department that authorized repairs to vehicles shortly before they were traded, his purchase of a Force vehicle immediately after trade-in was literally asking for allegations of impropriety.

(c) 1980 Plymouth Volare

On August 8, 1984, a 1980 Plymouth Volare was traded in by the Force, and on the same day it was purchased from the dealer by Michael Miljus. On April 7, 1984, the vehicle's vinyl roof was replaced at a cost of $240.75. Miljus testified that the vinyl roof had peeled back while the vehicle was being driven on the highway. He stated that Reginald Ellis, the Force mechanic, had told him just before the trade-in that he had intended to buy the car, which was a good one, but could not afford it because of personal problems, and Miljus then decided to buy it himself.

The IIT sent a brief to the Attorney General asking: "Based on the available data, insofar as the purchase of the 1980 Plymouth Volare is concerned, did Staff Sergeant Miljus violate any of the provisions of the *Criminal Code of Canada* or the *Police Act of Ontario*?" The Attorney General did not comment on this matter in his reply.

On the evidence, there was nothing improper about having a vinyl roof replaced four months before trade-in, so there are no grounds for a finding of impropriety against Miljus in relation to this particular incident, but, as already pointed out, it illustrates the dangers to the reputation of the Force and individual Force members arising out of private purchases of former Force vehicles.

CONCLUSION

The instances described above indicate the extremely loose administration of Quartermasters Stores and Supply that continued from the inception of the regionalized Force through at least until 1986, and the faulty judgement of some senior officers in failing to recognize the negative image they projected to other Force members, and to the public, in having their vehicles repaired in Force facilities and in purchasing vehicles recently traded in by the Force. While there is no evidence that there was any financial loss suffered by the Force as a result of purchases of traded in police vehicles by police officers, there is some suggestion that work on Force vehicles may have been delayed as a result of time spent on repairs to private vehicles. In any event, the use of insider knowledge to benefit an insider, while not amounting to misconduct in the absence of orders prohibiting such conduct, is extremely imprudent and invites the kind of allegations that resulted.

I understand that as a result of these disclosures, these actions are now prohibited, and I recommend that the situation should continue to be closely monitored.

(E) SPECIAL FUND

As we have already seen, section 18 of the *Police Act* provided that where found or stolen property came into the possession of the Force and the owner could not be ascertained, the Board could sell it and retain the proceeds for its own use (the *Police Services Act* now transfers this duty to the Chief). The NRPF practice was to convert to Force use, items, such as office equipment etc. that could be used by the Force, to give to charities clothing and similar items, and to sell at auction the remainder, mostly bicycles, of which there were 150 to 300 a year. All such items were recorded and tagged and held in the Neilson Street Quartermasters Stores until disposed of. An inventory was maintained, and all sold items had the selling price recorded and a duplicate sales slip was issued and verified by the auctioneer.

Proceeds were deposited with the Force accountant, who checked the total amount received against the sales slips. The balance, after expenses, was deposited in the Special Account, and varied from $7,000 to $14,000 per auction which occurred three or four times a year, depending on the volume of items received. According to a resolution of the Board dated May 31, 1983, the Special Fund was to be used for rewards, informants fees, undercover officers drug purchases, and "to pay expenses not normally provided for in the budget." These sometimes included floral tributes for funerals, conference expenses, retirement gifts etc. The Deputy Chief (Administration) was responsible for disbursements from the account and for keeping proper account books, although Gayder retained control of the fund when he was promoted from Deputy Chief (Administration) to Chief.

Disbursements required the signatures of the Chief and one of the Deputy Chiefs. Confidentiality of the names of informants was maintained by cross-reference to a secret ledger. Disbursements of more than $2,000 required specific Board approval. Two members of the Board were designated to audit the account periodically.

When John Shoveller was appointed Acting Chief, he requested an audit of the Special Account before taking it over. The Board retained a "forensic accountant" for this purpose.

The accountant's comprehensive review found no improprieties, but he recommended the tightening of guidelines for overall control of fund uses. On September 15, 1987, the Board passed a motion requiring expenses for civic receptions, testimonial dinners etc. to be paid out of the "Conventions Account" rather than the Special Fund, and on October 26, 1988 replaced the provision for "other expenses not normally provided for in the budget" with "other expenses specifically approved by the Board."

While none of the disbursements from the Special Account during the period examined could be considered improper, the possibility remains that large, albeit perfectly proper, expenditures could be made without political accountability because they are not made public. My recommendation in this regard appears with my other recommendations at the end of this Part.

The long-standing policy of not returning found money or bicycles to the finder when the owner could not be located was clearly wrong, although there can be sympathy for the theory that the Force might otherwise be used as a laundering machine for "dirty money" or stolen bicycles, if bicycle thieves, purporting to be "finders," turned in stolen bicycles to the police and then claimed the proceeds from their sale. As already noted, there is no specific requirement in either the old *Police Act* or the new *Police Services Act* that, failing location of the owner, found property be returned to the finder, subject to the discretion of the Chief in suspicious cases, and I have recommended such a provision.

RECOMMENDATIONS

HIRING PRACTICES AND PROMOTIONAL PROCESSES

It is recommended that:

1. *The Police Services Division of the Ministry of the Solicitor General consider the suggestions in the Coutts/McGinnis report*[9] *and conduct further research to develop and implement comprehensive personnel management systems for use by police forces of varying sizes, with particular regard to the following:*

   (a) *job analysis of the police constable's role and that of other ranks and positions to determine the personal attributes, knowledge, skills and physical/medical standards required for successful performance;*

   (b) *a performance appraisal system for officer and civilian employees of police forces;*

   (c) *selection systems for hiring and promotion which can be consistently applied in forces throughout the province, and consideration be given to centralization of key aspects of the processes such as the cognitive ability tests;*

   (d) *exploration of a merit pay or honour award system in order to reward or recognize job achievement as an alternative to promotion;*

   (e) *recommended recruiting strategies;*

   (f) *a requirement that the Assistant Deputy Minister monitor and report on a regular basis to the Solicitor General on the implementation and effectiveness of these recommendations.*

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[9] McGinnis, James & Coutts, Laurent. Hiring Practices and Promotional Processes, 1989.

2. *Pending the implementation of the recommendations in paragraph 1, the NRPF and the Board should:*

    (a) *in re-evaluating hiring and promotion processes, take into account the recommendations of the 1989 report of the Race Relations and Policing Task Force;*

    (b) *following the Selection Board interview, conduct thorough background checks on all successful applicants before offering a position with the Force;*

    (c) *formally prohibit relatives of candidates from participation in any selection process for hiring or promotion;*

    (d) *develop a clear policy on the use to be made of "alternate candidates" in subsequent hirings;*

    (e) *develop a system, with published criteria, for selection of Force personnel for assignments, such as specialized training, which provide opportunities for career development;*

    (f) *consider a provision that one member of police promotion panels be from outside the NRPF;*

    (g) *provide that the Police Association or the Senior Officers Association be entitled to send an observer who is not a candidate to any promotional interview involving their members; and*

    (h) *open positions above the rank of inspector to applicants from outside police forces in order to enrich the pool of candidates.*

RECOMMENDATIONS

PROPERTY

It is recommended that:

1. *Suitable premises be obtained for the Quartermasters Unit with particular consideration for:*

   (a) a central location within the region;

   (b) adequate storage for inventory and other Force property;

   (c) adequate facilities for fleet maintenance and repairs;

   (d) sufficient trained personnel to allow efficient operation;

2. *The position of Quartermaster be that of a senior officer with three areas of command:*

   (a) fleet management;

   (b) Force supplies (equipment, uniforms, office supplies and furniture etc.);

   (c) public property (seized, found and turned in articles, including court exhibits);

   Each of these areas should be headed by a supervisor responsible for the efficient operation of such area and reporting to the Quartermaster.

3. *The Quartermaster's role in the management of property be expanded so that, in addition to disposal, the unit be responsible for auditing all property within the Force and ensuring that records are updated with respect to final disposition.*

4. *That the present policy prohibiting repairs of private vehicles in the Force garage, and the purchase of traded-in Force vehicles by Force members continue to be carefully monitored.*

5. *The NRPF and Police Services Board formulate a policy on whether the Force should provide temporary storage of privately owned firearms. If privately owned firearms are to be accepted for safekeeping, appropriate regulations requiring proper controls and records must be passed.*

6. *The silver tea service referred to in Chapter 2 (E) (2) of this Part be returned to the finders if the owner cannot be located, and if the finders cannot be located or do not want the tea service, that it be disposed of in accordance with section 134 of the* Police Services Act.

7. *The Ministry of the Solicitor General give consideration to an amendment to the* Police Services Act *to clarify the discretion of the Chief of Police in relation to found property by providing that, where the owner of found property cannot be located, or where it cannot be determined who owns it, the Chief of Police may, in his discretion, sell it or return it to the finder.*

8. *The guidelines governing Special Account expenditures be amended to provide that no payments of an amount exceeding some reasonable maximum dollar limit for an expense which would normally be included in the Force's budget should be paid out of the Special Account, and that the Special Account should be audited annually by an outside agency, preferably at the time of the regular Force audit.*

PART II

PREVIOUS INVESTIGATIONS AND OTHER ALLEGATIONS

1 Previous Investigations

2 Other Allegations

3 The Problem

1 PREVIOUS INVESTIGATIONS

Under one of the terms of reference, I am required to inquire into and report upon "the matters disclosed by the Inquiry into the Drug Raid on the Landmark Hotel in 1974 and the propriety, efficiency and completeness of any other investigations into the activities of the Niagara Regional Police Force by other police forces or police agencies since the creation of the NRPF and the action taken to correct identified problems and to implement recommendations resulting from such Inquiry and investigations."

(A) THE LANDMARK INQUIRY

The Landmark Inquiry was ordered as a result of a drug raid conducted by members of the NRPF and RCMP at the Landmark Hotel in Fort Erie on May 11, 1974. During the execution of the raid, 115 people were detained and searched, including 36 females and nine males who were strip-searched. Six ounces of marijuana were seized and five people were charged. The manner in which the raid was conducted resulted in a public outcry, and on June 7, 1974, His Honour Judge John A. Pringle of The County Court of the County of Norfolk was appointed to conduct an Inquiry under the *Public Inquiries Act*.

This Commission's investigators prepared a brief about the Landmark Inquiry which was distributed to all counsel, and no counsel requested the calling of oral evidence on the matter.

In his report, released in January 1975, Judge Pringle made the following major recommendations:

(1) Persons found in a place other than a dwelling house, where there is no reasonable cause to believe that they are in possession of a narcotic or anything incidental to possession of a narcotic by themselves or others, should not be subject to search when the only basis for the search is their legitimate presence in such place.

(2) The senior officers responsible for the planning and execution of large-scale operations of this type should receive instructions so that they are fully acquainted with the problems and the necessity for close liaison and communication.

(3) That the Lieutenant-Governor in Council recommend to the Government of Canada that the *Narcotic Control Act* be amended in accordance with the recommendation in paragraph (1), so that Section 10 (1)(b) be amended to read:

> "(b) Detain for the purpose of searching any person found in such place whom he reasonably believes has possession of such narcotic."

(4) That Justices of the Peace of the province, who have been categorized as being sufficiently competent to issue warrants to search, be equipped with sufficient office equipment to allow them to keep documents issued by them in the execution of their judicial acts.

(5) That after the search of a room, person, or vehicle has been completed, the searching officer must restore the room and/or vehicle to its original condition and return to a person, any and all goods after the same have been found to be legitimate articles.

(6) The Intelligence Unit of the Niagara Regional Police Department be either disbanded or integrated more fully into the existing command structure.

(7) Sufficient physicians and registered nurses should be sworn in as peace officers to enable them to conduct searches of females who are suspected of secreting narcotics or similar substances in their body orifices.

(8) That the plan of operation by the Brantford Police Force, under the direction of Inspector Leonard O'Connell, in respect to their operation against the Graham Bell Hotel, Brantford, on the 23rd of November, 1973, be studied in depth as to how a raid should be planned and conducted, as well as the operations conducted by Detective Sergeant M.J. Scragg, O.P.P., of the Liquor Laws Enforcement section, Special Services Division.

In a March 17, 1975 report to the Board of Police Commissioners, Chief Shennan endorsed the recommendations, and the Chief and the Board proceeded to implement all the operational and administrative recommendations except for Recommendation (7) concerning the swearing in as special peace officers of sufficient physicians and nurses to conduct physical searches. The recommendation was discussed, but apparently got lost in the process of planning the other changes.

To implement Recommendation (6), the Intelligence Unit was reorganized, and a number of transfers of personnel were made. In accordance with Recommendation (8), on April 7, 1975, senior members of the NRPF met with senior officers of the Brantford Police Department to examine the Graham Bell Hotel operation plan, and in the following months continued studies of that plan and other raid operation plans of the Ontario Provincial Police Liquor Laws Enforcement Section.

Recommendations (1), (2) and (5) were general policy recommendations as to appropriate standards of police conduct in certain situations. As such, it is difficult to ascertain whether these standards have been applied and maintained. In September, 1975 and May, 1976 major training exercises, including mock raids, were carried out in conjunction with the Niagara detachment of the RCMP. In 1982 the Force undertook an in-depth study of its search policy, and a completely revised 51-page training manual *Training-Search Warrants* was developed and distributed, and is still in use.

Recommendations (3) and (4) were, of course, beyond the jurisdiction of the NRPF. In relation to N°. (4), Justices of the Peace are now required to file documents supporting the issue of a search warrant in the court records. In relation to N°. (3), the *Narcotic Control Act* (now section 11) still does not require the officer searching a person to reasonably believe the person is in possession of a narcotic. However, in the absence of such a provision, the Ontario courts have imposed their own.[1] Judge Pringle's recommendation that such an amendment be recommended to the government of Canada by the government of Ontario still seems to be an eminently reasonable one.

My conclusion is that these Landmark recommendations which were within the jurisdiction of the NRPF, have been implemented with the exception of N°. (7). While there is no indication that lack of implementation of this adversely affected Force operations, it is recommended that the Force consider the recommendation again and report to the Board on its feasibility.

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[1] *R. v. Debot (1986) 30 C.C.C. (3d) 12 - Ont. C.A.*

In order to ensure that the lessons learned in relation to narcotics raids and similar search and seizure operations are not forgotten, the Force should provide, by some means such as mock raids, training exercises or seminars, periodic reminders to involved police personnel of the principles to be employed in the execution of such operations.

(B) THE 1984 OPC INVESTIGATION

As mentioned at the outset of this report, throughout the summer and autumn of 1983 the NRPF was the subject of a great deal of adverse publicity in the media. The *Standard* carried a number of stories critical of the NRPF; local MPP Mel Swart raised questions about the Force in the legislature; Peter Kormos (a local lawyer, now Mr. Swart's successor in the legislature) expressed concerns about the Force in the press; and Mark DeMarco's many complaints were extensively quoted. CBC reporter Gerry McAuliffe aired a series of radio broadcasts alleging improper Force practices. Under considerable pressure, Solicitor General George Taylor announced that the OPC would investigate the allegations.

Robert Russell and Irv Alexander, both experienced investigators with more than 30 years with the Metropolitan Toronto Police Force before joining the OPC as advisors, were assigned to the investigation. They were given no terms of reference, and established their own, as follows:

"1. Has the Board fulfilled the requirements of its Bylaw N°. 34/78 — the Citizen's Complaint Bylaw? In particular, has the Board complied respecting requests for Hearings and/or Reviews of Investigations conducted by the Force?

2. Has the Citizen's Complaint Procedure, as described in the bylaw, been followed by the Force. Have investigations been thorough and unbiased? Have all citizen complainants had free access to register complaints and have officers who were responsible for breaches of discipline or criminal misconduct been appropriately dealt with?

3. Is the supervision of the police personnel such that adequate discipline is exercised across the Force?

4. Has there been indiscretion, professional misconduct, or criminal acts by members of the Force in connection with Mr. Mark Tiffany DeMarco?

5. To pursue any matter that comes to the attention of the Commission during its investigation of the foregoing that suggests misconduct or criminal activity by any member of the police force."

These objectives were approved by the Chairman of the OPC and by the Solicitor General. The fifth objective was an extremely broad one —

it apparently was not realized what a morass of rumours and allegations would be encountered. To thoroughly carry out that mandate, which would include criminal investigations, would require a staff of investigators and back-up personnel.

Russell and Alexander themselves carried out the investigation, which commenced on October 18, 1983. Chief Harris assigned then-Superintendent Shoveller to act as liaison officer with them. They found all Force personnel to be co-operative.

Their report was forwarded to the Solicitor General on May 7, 1984. It was divided into eight parts.

(1) The DeMarco allegations

Part I dealt with the complaints of Mark DeMarco, referred to earlier in relation to gun allegations.[2] Russell and Alexander spent 22 hours with DeMarco taping and documenting his 56 complaints, consisting of allegations of incompetence, negligence and general misconduct, including a conspiracy by Force members to defame him. Their report evaluates the complaints according to standard citizen vs. police complaint procedures. They reported that nine of the complaints were "unfounded"; 14 were situations where the incident did occur, but the officer involved acted properly, and should be "exonerated"; 26 were "not substantiated" in that there was insufficient evidence to prove or disprove the allegations; two were "substantiated in part"; three were "substantiated"; two were not within the mandate of the investigation.

Of the two complaints that were substantiated in part, the first was that DeMarco had obtained vehicle registration checks from officer P., who had charged a five-dollar credit on future purchases from DeMarco's store for each check. DeMarco produced only one document showing a vehicle registration check which indicated it had been received in the NRPF records section between January 1979 and March 1981. Officer P. retired from the Force in 1977. No proof of any credit was found. In the second "substantiated in part" complaint, DeMarco complained that unidentified officers, during the execution of a search warrant at his residence, had taken away a device for removing broken keys from locks, and had not returned it. Investigation revealed that the police had taken such a device, but identified it as a device for picking locks. Since this identification was disputed, the complaint was characterized as "Substantiated in part."

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[2] See The DeMarco gun, p.70.

The first of the "substantiated" complaints was that the police had failed to satisfactorily investigate an occurrence when DeMarco was attacked by three men, one wielding a machete, at 1 o'clock one morning as he was returning to his residence. He managed to get inside, and phoned the police, who located the assailants' vehicle and arrested and charged the two occupants.

DeMarco's complaint was that the police had failed to attempt to locate another car, which had been present at the scene of the assault, of which he gave them a description, and in which he had recognized a male, and a female who was the wife of one of his assailants. Russell and Alexander concluded that the police were negligent in ignoring DeMarco's report concerning the other car.

The second "substantiated" complaint was that, following a phone call by Mr. DeMarco to the police advising that a person was attempting to sell him a gun which the police identified as stolen, two officers arrived at his store, arrested the person, and left without then, or later, thanking him for his assistance or advising him of the outcome. Russell and Alexander concluded that "good police practices and common courtesy should have dictated that some officer return and advise and consult with Mr. DeMarco."

The third "substantiated" complaint was that, in executing a search of DeMarco's residence, two handguns were seized by the police on the ground that they were unregistered. It turned out that one was registered to DeMarco, and application for registration of the other was on file in the police offices. Both were returned to DeMarco eight days later. Russell and Alexander concluded that, although the error was soon rectified, the officer was "overzealous" in making the seizure.

Of the two complaints which were considered beyond the OPC jurisdiction, one was that an officer had made false statements to the media about Mr. DeMarco, but the matter was the subject of a civil suit, and the other was that a public official (not a police officer) had been intoxicated during a trial.

The 49 complaints that were classified as unfounded, not substantiated or "exonerated" had even less substance, but it took Russell and

Alexander three months and 90 interviews to investigate and dispose of them.

(2) The Swart allegations

Russell and Alexander met with Mel Swart on two occasions to obtain details of the allegations concerning the NRPF which he had made in the legislature and the media. From these interviews, they identified nine complaints which they investigated.

The complaints were diverse, ranging from a landlord's complaint that the police had damaged a door knob when breaking into the apartment of a deceased accident victim in order to obtain the address of the deceased's next of kin, to charges of assault by the police upon a woman who had protested about the lights of a police cruiser shining in her windows while she was having a Christmas party.

The OPC investigators interviewed all complainants and witnesses, and prepared for the Solicitor General a full report and conclusion regarding each incident. Their overall conclusion was that "there appears to be nothing in the incidents brought forward by Mr. Mel Swart that provide evidence of a pattern of misconduct or even isolated incidents of misconduct by members of the Niagara Regional Police Force." They did not, however, go back to Mr. Swart to advise him of the results of their investigations of his allegations.

(3) Allegations raised by the *Standard*

On February 5, 1983, *Standard* reporter, Kevin McMahon, published a lengthy article alleging that NRPF officers habitually ignored "the civil rights of hundreds, perhaps thousands, of high school and university students, young people who work and, increasingly, the young employed." During the remainder of the year, a number of other articles criticizing the NRPF appeared in the *Standard*.

The OPC investigators interviewed both Mr. McMahon and the *Standard* editor in order to learn the foundation for these allegations. Their report states that Mr. McMahon told them that the article was based on conversations spread over a few years about youths being stopped by the police, but that he was never given specifics. He had not checked with the

NRPF to verify the information because he did not believe they would co-operate, but he gave the investigators the names of eight people whom he had talked to, and indicated he had talked to a number of lawyers. The investigators interviewed the eight persons named, and their detailed report of these interviews did not find the allegations to be substantiated. They also interviewed a dozen prominent local criminal lawyers, some of whom had been quoted in McMahon's article. The investigators found that the lawyers did not agree with the article's thesis in most respects. An assistant Crown Attorney, who had been extensively quoted in the article, stated that generally the quotes were accurate, but that some had been taken out of context and unfairly presented.

In their report, Russell and Alexander stated: "The investigation, as it relates to the allegations made in the *St. Catharines Standard* has failed to uncover any acts that could be considered 'police harassment.' Not only have the writers been unable to substantiate any of the concerns expressed, but no new allegations have come to their attention from other sources."

The report concludes by observing that there was not "very extensive research into the stories used as a basis for this series of articles and editorials", due perhaps to an impression that the police would not co-operate. It urges the NRPF to establish the position of "Media Relations Officer" to repair the lines of communication between the Force and the media.[3]

(4) The DeMarco gun

The general circumstances surrounding this gun, a .25 calibre Colt, have already been set out in the Property Section.[4] DeMarco had asked Chief James Gayder to check the title of a gun he had purchased. After checking that it had not been reported stolen, Chief Gayder had returned it to DeMarco without ensuring that DeMarco had registered it, and DeMarco placed it in his safe. In January, 1982, DeMarco's store was searched by the NRPF, and a number of weapons charges were laid against him. The safe was not opened, and the Colt was not discovered, but it appears that the January, 1982 incident was the genesis of many of DeMarco's complaints against the Force. In May, 1983, DeMarco went to Gayder's house and secretly tape recorded Gayder's affirmative answer to a question as to whether he had checked out the Colt for DeMarco. He took the recording to Gerry McAuliffe; McAuliffe interviewed Gayder about this and other guns, and Gayder's guns formed the subject matter of some of McAuliffe's subsequent broadcasts. Mel Swart also brought up the DeMarco matter in the legislature in October and November, 1983.

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[3] See Recommendation 5, p. 321.

[4] See The DeMarco gun, p. 70.

As a result of these broadcasts, Chief Harris assigned Sergeant Thomas Teggin to investigate, and Teggin interviewed DeMarco. DeMarco admitted to having the gun in his possession, and Teggin charged him with possession of an unregistered restricted weapon. The charge was later withdrawn by the Crown Attorney, but the incident increased DeMarco's resentment toward the police in general and Gayder in particular. Chief Harris concluded there were insufficient grounds to charge Gayder, but in the fall of 1983 Mel Swart raised the matter in the legislature.

Russell and Alexander interviewed all involved witnesses, including DeMarco, McAuliffe and the youth who sold the gun to DeMarco, and checked CPIC records, all correspondence and reports, and the Crown brief. They then reviewed the whole matter with an outside Crown Attorney, who advised them that there was insufficient evidence to charge Gayder.

The draft OPC report originally stated: "In our view, James Gayder exhibited very poor judgment, and to say the least, was indiscreet in his handling of the .25 pistol issue and his association with DeMarco." Following this first draft, it appears that a lawyer with the Solicitor General's department suggested a rewording of their conclusion. The revised version, as filed with the Solicitor General, said that Gayder had "exhibited questionable judgement" in not inquiring into the background of the firearm, which any experienced police officer would be expected to do, but stated: "We do not wish to imply, by the above, that Chief Gayder is guilty of an improper motive or of wilful disregard of duty in this regard. We do suggest that better judgment could have been shown." Both versions contained the same concluding sentence: "No evidence of criminal activity was uncovered relative to Gayder's involvement with Mark DeMarco."

(5) Citizens' complaint process

Russell and Alexander examined the NRPF's process for handling citizens' complaints, and looked into the treatment accorded each of the 2,332 complaints received by the Force in the 13 years of its existence up to that time. They concluded that the complaints unit was "fulfilling its responsibilities in a thorough and responsive manner." They did, however, recommend certain improvements reflecting problems common to other forces as well. The whole process relating to citizen's complaints is now covered by the *Police Services Act*.

(6) Citizens' complaints at the Board level

The OPC investigators found that there was a problem in the then-existing process in that it allowed complainants to make statements detrimental to police officers without the officers having a right to be present to answer the allegations. The process was in the course of being revised at the time, and the investigators approved of the proposed revisions. The *Police Services Act* now covers the process.

(7) Discipline and supervision

In this Part, the investigators pointed out some weaknesses in supervision and discipline in the NRPF, and noted in particular that the quality of general occurrence reports (GORs) was often inferior.

(8) Index of complainants and conclusions

This Part was simply an index.

Not included in the report were two matters which caused Russell and Alexander concern, but which they mentioned in their Inquiry evidence. The first was that "the Force wasn't unified as it should be and there was squabbling between different stations and there were rivalries that weren't healthy rivalries."[5] They noted in their notes that this was their "most important concern." They did not consider that this was within their mandate, but discussed the problem with Chief Gayder, and understood that he was trying to do something about it.

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[5] Inquiry transcript, vol. 207 (Aug. 13, 1990):171.

The second matter was that, although they received no specific complaints about Staff Sergeant Allan Marvin, they heard rumours that he was not "straight" and "could not be trusted." There was concern that he was "cosy with the Chief" in that he was member of a group, which included the Chief, who regularly played cards together. They did not investigate the matter, but reported it to Gayder.[6]

Russell and Alexander submitted their report to the Chairman of the OPC on May 7,1984. The same day, the Chairman forwarded the report plus a short executive summary of it to the Solicitor General.

Russell and Alexander recommended that the full report be made public to alleviate the public concerns that gave rise to the investigation. Instead, however, the Chairman prepared a 19-page summary, and, apparently concerned about the sensitive nature of parts of the report which named names, recommended that the full report remain confidential. On July 30, 1984, the Solicitor General issued a press release about the investigation with the 19-page summary attached.

The full report was not released, resulting in many complaints from the media. The *Standard* characterized the summary as a "whitewash." Mel Swart wrote to the Solicitor General on August 7, 1974, strongly criticizing the summary, and calling for release of the full report, with sensitive areas blacked out if necessary. The Solicitor General refused. Other politicians, particularly some in the Niagara Region, were very critical of this decision.

(9) Gayder's guns

Because of pressure to file a report on their investigation of the problems in the NRPF, and because it was not part of their original mandate, Russell and Alexander filed the first eight Parts before proceeding to investigate rumours about Chief Gayder's gun collection. At an early stage, they had received, anonymously in a brown envelope, a copy of Gayder's gun registrations, but the matter was not given a high priority. In their May 7, 1984 memo accompanying their report, they advised the Solicitor General that Gayder's gun collection was under review, and they would report further when the review was completed.

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[6] See p. 181.

On July 3 and 5, 1984, McAuliffe did broadcasts about Gayder's gun collection, and referred specifically to the Welland guns, intimating that Gayder had obtained them improperly. On July 6, 1984, Russell and Alexander interviewed Gayder about his guns, and the same day interviewed Walsh about his delivery of the Welland guns to Gayder. They then contacted those persons from whom Gayder said he had obtained guns, checked all the registrations with Staff Sergeant Knowles of the RCMP Firearms Registration Branch in Ottawa, and provided a complete list of the Gayder registrations to the RCMP Criminal Intelligence Service in an attempt to obtain histories of the guns through their American records. The RCMP searches did not turn up any additional information.

Russell and Alexander completed their report, which they headed: "Part IX — A supplementary report respecting allegations by Mr. Gerry McAuliffe of the CBC concerning the legality of a collection of handguns in the possession of Chief of Police James Gayder", and forwarded it to the Solicitor General in September, 1984. No press release or summary of the supplementary report was issued.

CONCLUSIONS

Under my terms of reference, I must report on the efficiency and completeness of the OPC investigation, as well as the action taken to correct identified problems, the manner in which the investigation was reported to the public, and any misconduct on the part of members of the NRPF revealed by the investigation.

Russell and Alexander faced a monumental task in sorting through and investigating the myriad complaints, most of little substance, which they received. I find no fault with their investigation or conclusions in relation to these complaints, and can only admire their patience and restraint.

The primary problem faced by Russell and Alexander in their investigation was the vagueness of their mandate. The investigation was initiated as a result of political pressure created mainly by the articles in the *Standard*, McAuliffe's broadcasts, and Mel Swart's questions in the legislature. Unfortunately, their terms of reference were not clearly delineated, and appear to have been what Commission counsel paraphrased as "check what all this fuss is about." This left the investigators to compose their own terms of reference as to what NRPF problems they understood they should look into.

It must be understood that the OPC was not a police force, and Russell and Alexander, in spite of their extensive police investigatory experience, were not at that time police officers and did not have the authority or mandate to conduct a criminal investigation. They were classified as "advisors" to the OPC whose normal role was to advise and assist Ontario police forces in administrative and procedural matters.

Thus, from the very beginning, the investigators did not have the powers necessary to respond to some of the more serious public concerns.

A further problem was the paternalistic manner in which the investigators' conclusions contained in the first eight Parts of their report were made public. All that was revealed to the public was the 19-page summary which, while reasonably accurate as far as it went, did not clearly explain the research behind the investigators' conclusions. Public confidence in the Force had been shaken by the allegations raised in the press, the radio and the legislature, and it was necessary to respond to those allegations in a manner which would restore that confidence. Instead, the persons who made the allegations were given no opportunity to examine the reasons why their allegations were dismissed, and their expressed dissatisfaction with this counteracted efforts to restore public confidence and undermined the utility of the investigation. It can be understood that it would be unfair to publish an investigatory report, not subject to the safeguards of the rules of evidence, which might list names and personal details about the complainants and the persons who are the objects of the complaints. However, use could be made of pseudonyms to allow the parties to remain anonymous, while still providing sufficient details to support the conclusions and the thoroughness of the investigation.

Similarly, the failure of the investigators to get back to the persons putting forward the allegations, in order to share the results of their investigation and give an explanation for their conclusions, contributed to those persons' conceptions that the report was a "whitewash." Even a partial report, not given to the public generally, but containing substantial enough details to convince the complainants that their allegations had been properly addressed, might have avoided the adverse reaction on their part, with attendant harmful publicity, that the sparse 19-page summary engendered.

Russell and Alexander, however, understandably considered that they had no right to reveal details of their investigation and conclusions other than to the Solicitor General, and left it up to the Ministry to decide what should be published.

Russell and Alexander freely admitted that the conclusion in their report on Gayder and the DeMarco gun had been amended, at the suggestion of a lawyer in the Solicitor General's Ministry, from an observation that Gayder had "exhibited very poor judgment and, to say the least, was indiscreet" to "exhibited questionable judgment" and the latter was what was quoted in the minister's public statement. The investigators testified that they went along with the revision because they saw no significant difference in the two versions. Had the whole report been made public, the difference might not have been significant, since the criticism of Gayder would be seen in its proper context, but to those who raised the issue, the rather subdued phrase "questionable judgment" in the summarized version of the report apparently increased concerns about the thoroughness of the entire investigation.

The OPC investigation of Gayder's guns was not part of the original investigation and report. Presumably, Russell and Alexander considered the matter should be looked into because of the rumours they heard as they did their other investigations, and because of McAuliffe's broadcasts, but it would not appear that they felt there was much substance to the rumours. Their investigation of the guns was the subject of much criticism by counsel for the Board and for VanderMeer.

As already noted, this was not a criminal investigation, and they did not have the mandate or back-up personnel to make it so. One only needs to look at the numerous volumes of interviews and documentation produced by the Commission's team of seven investigators as a result of months of investigation, aided by their police powers and all necessary secretarial assistance, to realize what an impossible task faced the two OPC "advisors" limited as they were by lack of staff and by pressure to complete their report. They accordingly focused their investigation on the copies of registrations that had been passed on to them anonymously in the brown envelope, and which were also the focus of McAuliffe's broadcasts about Gayder's guns.

Their failure to locate Alexander Ross[7] was highlighted by those criticizing their investigation, suggesting that their report did not conclude that Gayder was guilty of misconduct because their investigation was careless and did not go deep enough. There were intimations that the investigators did not really want to find evidence of Gayder's misconduct and the Ross matter was cited as an example.

One of the registrations states that Gayder received a gun from Ross, whose address at the time (1969) was shown as 165 Ontario Street, St. Catharines. Ross is a high school teacher who has taught in the same school in St. Catharines for the past 25 years, but in 1984 lived in Fenwick, a small village about 15 miles from St. Catharines. He was listed in the telephone directory for that area. However, the OPC investigators failed to find him, and so drew no conclusions as to the propriety of Gayder's acquisition of the Ross gun, which, on the basis of the Inquiry evidence, raised many questions.

Their evidence was that they checked the city directory and found that Ross did not live at 165 Ontario Street. They checked the St. Catharines telephone directory and found no listing. They then checked through CPIC for his address on his driver's licence, but at that time Ross did not have a valid licence, so was not listed. Alexander believes he also checked the telephone books for the outlying areas, but if he did, he did not search far enough afield.

As "advisors" to the OPC, Russell and Alexander did not have the manpower or other facilities to conduct extensive investigations, and turned to the NRPF for assistance in finding Ross. On July 6, 1984 they asked Deputy Chief Walsh to have someone from the Force try to locate Ross, and on July 13, Walsh telephoned Russell, whose notes record the message as: "Investigator has been unable to learn anything about this person. No one by that name at that address. Negative by name and address in City Directory." Relying on this information, Russell and Alexander took no further steps to locate Ross.

I conclude that, in view of all the circumstances, Russell and Alexander cannot be severely criticized for their failure to find Ross. The CPIC, the NRPF, and for several months the IIT, with all its resources, similarly were unable to locate him. I certainly do not agree with Sergeant

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[7] The Ross guns, p. 48.

VanderMeer's charge that, in "finding no serious wrongdoing", the report was a "deceit and coverup."

A full criminal investigation would have delved more deeply into the background of the guns registered to Gayder, but Russell and Alexander were not conducting such an investigation, and as noted, had neither the mandate nor the facilities, nor, for all practical purposes, the time, to do so. It would certainly have been in order for them to conclude in their Part IX report what Alexander testified was his personal view, that is, that the practice of collecting guns turned in to the Force was not proper, but that their investigation had revealed no wrongdoing that could support *Criminal Code* or *Police Act* charges. Had even that much of a conclusion been published, it would have helped to dispel the rumours of wrongdoing, would have served as a warning of the dangers and impropriety of police officers collecting guns, and would have let the public know that something was being done about the matter.

Counsel for the OPC submitted that "the report resulted from an investigation which was regulatory in nature and was never intended to be a public investigation", that the full report was distributed to Chief Gayder and the Board of Police Commissioners, and that accordingly, the decision by the Ministry of the Solicitor General to publish only a summary was reasonable under the circumstances. Nevertheless, such an investigation, involving numerous interviews of not only police personnel but also members of the public, and following on the heels of widely publicized allegations of improprieties, soon becomes one of public concern, and, failing publication of a full report, suspicions of a cover-up are bound to result. However, I agree with the submission that in the instant case, the investigators had reason to believe that they had no prerogative to return to the source of the allegations to provide personal "feedback."

I shall be recommending that the OPC's successor, the Ontario Civilian Commission on Police Services, should not be used for an investigation, such as the one just examined, which may evolve into a quasi-criminal investigation. If, as was suggested, the NRPF investigation was assigned to the OPC as a method of relieving the political pressure at the time, it was very unfair to the OPC. Consideration should be given to assigning such investigations to an independent unit, separate from the Special Investigation Unit, specifically created to investigate allegations of criminal conduct other than shootings, on the part of members of Ontario police forces.[8] At the conclusion of their investigation, the investigators should contact those who brought forward the allegations and provide them with some "feedback" or debriefing so that the results are understood.

Following delivery of a report of an investigation into publicized allegations against the police, it is of the utmost importance that the findings be immediately made public in a meaningful way and as fully as is practical. However, it must be recognized that it is not possible to report every investigation to the public in detail. In many cases, to do so would prejudice further investigations or slander those who had been investigated but found blameless. Unfortunately, when an allegation of wrongdoing is made public, regardless of how thoroughly it has been disproved, some suspicions always seem to survive.

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[8] See pp. 189-190 and Recommendation 3, p. 191.

(C) PROJECT VINO

Staff Sergeant Ronald Sandelli is a member of the Metropolitan Toronto Police Department assigned to the Special Enforcement Unit (SEU). The SEU is a joint forces operation specializing in investigations of drug operations and organized crime. In early December, 1984, on the invitation of his cousin, Sergeant Ronald Peressotti of the NRPF, Sandelli attended the NRPF Christmas party. Peressotti introduced him to Sergeant Cornelis (Cor) VanderMeer and to Stephen Sherriff, a former assistant Crown Attorney, who at that time was the Senior Discipline Counsel for the Law Society of Upper Canada. Sherriff and VanderMeer had become friends as a result of VanderMeer's investigation, jointly with Sherriff, of several Niagara area lawyers, particularly G.H.[9] During the course of the evening, VanderMeer and Peressotti mentioned to Sandelli their serious concerns about corruption in the NRPF, and they arranged to meet at a later date to discuss the matter.

On December 27, 1984, Sandelli and his SEU partner, Detective Sergeant Lyle MacCharles of the OPP, met Peressotti, VanderMeer and Sherriff at Sherriff's home. Possible NRPF corruption was discussed, and the names of G.H., Walsh, Typer and C.[10] were mentioned. A second meeting was arranged for January 3, 1985, again at Sherriff's home. VanderMeer brought Constable William Gill of the NRPF to relate his concerns about the Force. According to a memo prepared by Sandelli, Gill told those present that "corruption has spread throughout the Police Force like cancer." Later, at the Inquiry, Gill testified that his allegations were simply "rumour and street talk", but there was a conflict of evidence amongst those present at the meeting as to whether he at that time presented the allegations as gossip or as first-hand information. Gill told the others at the meeting that he had been warned he was wasting his time investigating "bikers" because they had sources of information within the Force. He also spoke of allegations of senior officers playing high-stakes poker with members of the criminal element who had connections with disbarred lawyer G.H., and that he had seen G.H. visiting the offices of senior NRPF administration officers.

At the Inquiry, he stated that he later learned that the person he had seen was Larry Quattrini, the Board Administrator, who looked like G.H.

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[9] See p. 183.

[10] See p. 179.

He testified: "I may have said a lot that evening. I had a few drinks in me ... my phraseology may have been stronger than it should have been."[11]

The various allegations brought forward at this meeting were treated seriously by the SEU officers. On January 9, they prepared a 10-page summary which they delivered to their superiors with a recommendation that the matter be investigated. The memorandum points out that the NRPF officers involved gave the information in strict confidence and "adamantly refused" to discuss the situation with other officials for fear information would leak back to their department and place their careers in jeopardy.

The SEU refused to become involved, since investigation of other forces was outside their mandate. Sherriff, Sandelli and MacCharles then met with Deputy Commissioner Lidstone of the OPP, and Lidstone agreed that the OPP would investigate.

On January 14, 1985, Inspector McMaster and Detective Sergeant Joyce of the OPP were assigned to conduct the investigation. The investigation was code-named "Project Vino" and was established as a "secret" investigation because nothing was to be done which would identify the NRPF informants. The same day, Sandelli and MacCharles met McMaster and Joyce and briefed them on the allegations. The importance of maintaining the anonymity of VanderMeer and Peressotti was emphasized. McMaster and Joyce then met with Sherriff and he provided a copy of his memo concerning G.H. and of his letter to Acting Deputy Chief Leigh registering his concern over the "removal" of VanderMeer from the G.H. investigation.[12] Sherriff told them everything he knew or had heard regarding the matters referred to in the reports and memos.

McMaster and Joyce then began an "intelligence sweep" of the OPP's intelligence files, searching for any allegations of wrongdoing by NRPF personnel. On January 17 they met VanderMeer and Peressotti to discuss their information. One of VanderMeer's main concerns was Walsh's relationship with G.H., but he also referred to Typer's relationship with C.,[13] Gayder's guns,[14] Marvin and the Greenfield gun and Gayder's interference with a drug investigation involving his son.[15] These discussions were subject to a guarantee of anonymity and confidentiality for VanderMeer and Peressotti. Joyce and McMaster were very concerned that this would seriously restrict their investigation. However, they realized that if they did not accept those terms, they would receive no information and so decided to proceed as a secret investigation.

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[11] Inquiry transcript, vol. 136 (Dec. 12, 1989): 163.

[12] See p. 183.

[13] See p. 175 ff.

[14] See p. 40.

These restrictions did seriously limit the methods that could be employed in the investigation. If they came openly to the Niagara area and questioned police officers, Chief Gayder would soon be on the phone to the OPP Commissioner demanding to know what they were doing in his territory, and this would inevitably lead to the identification of VanderMeer and Peressotti. Nor could the investigators avail themselves of the resources of the NRPF, including examination of documents etcetera, for the same reason.

On January 18, 1985, Joyce and McMaster met with OPP Inspector Paul Wilhelm, who had filed a report on June 11, 1981 concerning rumours of wrongdoing in the NRPF. They asked Wilhelm to go back to his sources and update his report without divulging their investigation, which Wilhelm did. His sources were Melinko, Madronic (an NRPF constable) and VanderMeer. Wilhelm filed a second report on February 7.

VanderMeer and Peressotti kept in contact with the OPP investigators throughout the investigation, relaying information to Joyce and being informed by Joyce of the progress of the investigation. They introduced Onich to Joyce, and Onich provided information regarding a home-made handgun turned in to Feor, the firearms officer, which Onich believed had been taken by Gayder.[16] Onich also delivered to Joyce 28 GORs concerning firearms, some of which he suggested might show guns which had been taken by Gayder. The OPP checked all these GORs against Gayder's gun registrations and found no matches.

On February 11, 1985 the DeMarco/ McAuliffe wiretap allegations were assigned to McMaster and Joyce. This was not a secret investigation, so they could operate openly in that regard, but were still restricted in relation to the other matters.

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[15] See p. 185.

[16] See p. 73.

To further their investigations, Joyce and McMaster obtained judicial wiretap authorizations to intercept the telephone communications of G.H., C. and some related persons. None of the interceptions produced evidence supporting allegations of corruption in the NRPF. At one point, Sherriff telephoned G.H. in an attempt to spark some incriminating communication from G.H. to Walsh, but nothing happened. When the authorization expired, there was no evidence upon which a renewal application could be based, and that line of investigation was abandoned.

In the summer of 1985, VanderMeer and Peressotti brought Peressotti's partner Constable Gino Arcaro into the picture. Arcaro had investigated the death threat C. had allegedly made against VanderMeer.[17] On completion of his investigation, and after consultation with a Crown Attorney, Arcaro had cleared the allegation as unfounded. VanderMeer was unhappy with this, and on August 12, 1985, he, Arcaro, Peressotti, Onich and Sherriff met with Joyce. The death threat was discussed, and Joyce informed them that the OPP Vino investigation was likely to wind down in the near future. VanderMeer stated that this would not be the end of the matter.

Meanwhile, an OPP investigation into alleged unauthorized NRPF wiretaps continued. In September 1985 McAuliffe's radio programs reported alleged additional illegal wiretaps, and the investigation was expanded.[18] In October, 1985, Peter Moon wrote a long article in the *Globe and Mail* based on allegations of NRPF misconduct relayed to him by VanderMeer.

On January 20, 1986, Onich arranged a meeting with Joyce, and told him that VanderMeer was not satisfied with the results of the OPP investigation, particularly the fact that they would be laying no charges, and had told Onich he intended to embark on "Plan B". Onich was not sure what Plan B was, but told Joyce he believed it was a plan to get a public inquiry into the NRPF.

Sherriff told the Inquiry that he continued to have concerns about the NRPF, since "there a big difference between whether or not there's internal problems in a Police Force and whether or not someone can prosecute it."[19] Mrs. Taylor was elected chairman of the Police Commission on January 8, 1987, and the same evening met with VanderMeer and Sherriff and she was advised of their concerns, and of the existence of Project Vino. On January 15, Mrs. Taylor met with the Solicitor General and officially requested a copy of the Project Vino report. On January 16 she wrote him repeating her request.

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[17] See p. 161.

[18] See The OPP Wiretap Investigation, p. 145.

On February 9, 1987, Shoveller and Taylor met the Solicitor General and again requested a copy of the Vino report, and on February 24 the Police Board wrote to the Solicitor General reiterating the request. Up to that time, no report had been prepared, but in accordance with the Board's request, Inspector McMaster prepared a report and on March 16, 1987, it was personally delivered by McMaster to Shoveller, subject to a "third party notice" that it was not for publication. Shoveller read the report and discussed it with McMaster. The next day he turned over a copy of the report to the IIT.

Having noted a reference in the report to Gayder's guns, Shoveller requested more information, and on March 27, 1987, McMaster provided him with a 12-page memorandum prepared by Joyce, together with a copy of the Gayder gun registrations. Shoveller passed these on to the IIT.

On March 26, 1987, Newburgh and Rattray interviewed Inspector Wilhelm whose memorandum of June 11, 1981, outlined rumours of wrongdoing within the NRPF. Wilhelm testified that they were only rumours, and although he had not investigated them, had felt he should make a note of them. He stated he could not recall any specific conversation, but VanderMeer and Melinko were two of the people he had talked to. Rattray testified that he and Newburgh spent half a day with Wilhelm, going over the Vino report "paragraph by paragraph and asked him what direct knowledge they had about this, who their informants were ... ... we wanted to find out whether this was fact, rumour or fiction." Asked what conclusion they came to, Rattray testified: "I didn't put too much stock in what was in the report. I think Staff Sergeant Newburgh and myself on the way home considered it bullshit – brought that report back and, to the best of my knowledge, we filed it in a book and forgot about it."

The Board continued to press for other OPP reports arising out of their investigation, and on April 30, 1987, wrote the Solicitor General renewing its request. On August 30, 1987, Deputy Commissioner Lidstone of the OPP wrote Shoveller authorizing him to disclose the wiretap investigation reports to the Board, but no mention was made of the Vino Report. However, as it turned out, only one Board member, Mrs. Taylor, requested a copy of the wiretap reports.

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[19] Inquiry transcript, vol. 186 (May 29, 1990): 154.

On October 20, 1988, the *Toronto Star* published a front-page article about corruption in the NRPF, obviously based on the Project Vino Report, a copy of which must have been provided by an informant. Most of the more sensational Vino allegations were quoted in the article, together with additional information that could only have been supplied by someone with intimate connections to the NRPF, and, according to Chief Shoveller, that additional information would be known only to those who had assisted in the OPP investigation. All witnesses who could have knowledge of the leak were asked under oath if they had any information about it. All denied it.

CONCLUSIONS

As with the other investigations, I am required to comment on the propriety, efficiency and completeness of the OPP investigation, and the appropriateness of action taken to correct identified problems.

Given the restrictions placed on them by their agreement not to do anything that could identify their informants, I agree with the opinion expressed by Chief Shoveller at the Inquiry that he could not see what more the OPP could have done. It was not open to the investigators to openly interview police witnesses or to obtain access to Force documents. They used secret wiretaps, but once the authorizations expired without revealing evidence to support the allegations, they could not obtain renewals. The informants did not produce documentary or other demonstrable evidence to support their allegations. The investigators were thus unable to explore some areas of their investigation as fully as they would have liked, but their investigation accomplished everything that was possible given the limitations they faced.

There was only one allegation for which the OPP investigators found substantiation, and that was Typer's actions in improperly obtaining information for C. The NRPF responded properly with *Police Act* charges against Typer.

Chief Shoveller responded properly to the balance of the Vino Report by turning the report over to the IIT for any further investigation it considered necessary. This was appropriate, particularly since, (although it was presumably unknown to Shoveller), VanderMeer and Onich, two members of the IIT, were two of the three original informants to the OPP. Further, a substantial part of the Vino report referred to the Wilhelm information, and Wilhelm testified that his principal sources were VanderMeer and Melinko. Melinko was also a member of the IIT. The delivery to them of the Vino report provided them with the opportunity to follow up on the investigation of their own allegations if they felt further investigation was necessary. However, it was Newburgh and Rattray who did the follow-up. They interviewed Wilhelm, and, according to Rattray, concluded that the allegations Wilhelm had received were "b...s...." Apparently VanderMeer and Melinko did not disagree, or feel their allegations warranted their own investigation. Onich had earlier been replaced on the IIT.

I conclude that the response taken to the Project Vino Report was appropriate. There was criticism that the report, or at least a detailed summary of it, was not made public. However, the "complainants" were advised of the results. Peressotti, VanderMeer and Onich were regularly updated on the progress, and Sherriff was present in August, 1985, for what he described as a "debriefing." Sherriff was not kept up to date on the progress of the investigation to the same extent as the others, and considered the debriefing was "cryptic." He continued to harbour suspicions about allegations which Project Vino had found unsubstantiated, and passed his suspicions on to Peter Moon, who published an article about them in the *Globe and Mail*. This article was included in the package that Mal Woodhouse's prepared in support of his motion for a public inquiry during the summer of 1986. Sherriff also advised Mrs. Taylor of his suspicions in January 1987, and this bolstered her own suspicions of corruption in the Force.

It was suggested that, although the conduct of Project Vino was commendable in every other way, the OPP could be faulted for not providing more information to Sherriff in answer to his allegations and suspicions, and for not providing more information to the public about their investigation and its results. While it might have been preferable to advise Sherriff in more detail about their conclusions, he was not a police officer, the secrecy surrounding the investigation would naturally inhibit the investigators from disclosing detailed information to a "civilian", and I am not prepared to criticize them in that regard. Nevertheless, I consider that, in ordinary circumstances, the informants or complainants should be given as much information as possible about the results of an investigation of their allegations in order to allay suspicions of an incomplete investigation or of a cover-up. For the same reasons, the OPP cannot be faulted for not making their report public, particularly so because the allegations had not been raised publicly and, for the most part, had been found to be unsubstantiated.

Project Vino was a sincere attempt by the OPP to investigate allegations of wrongdoing under secrecy conditions imposed by the complainants which made a thorough investigation impossible. The real problem was that its report, never intended to be made public, was leaked to the press. The resulting article, based on the unsubstantiated allegations in the report, but not naming names, resulted in extensive and unnecessary damage to the reputation of the NRPF.

(D) THE OPP WIRETAP INVESTIGATION

During his research for his broadcasts about the NRPF, Gerry McAuliffe met Mark DeMarco, who provided him with information of perceived wrongdoing in the Force.

In October or November of 1984, McAuliffe received in the mail an envelope similar to others he had received from DeMarco, and thought he recognized DeMarco's writing on the envelope. The envelope contained a number of documents, which McAuliffe did not recognize, and he placed them with other documents he had received from DeMarco.

On January 23, 1985, McAuliffe decided he had no further interest in the considerable volume of documents that DeMarco had given him, and packed them up in a box he described as being the size of a 24-bottle case of beer, and DeMarco came to his office and picked up the box. The following morning DeMarco telephoned McAuliffe, and told him he had found four pages in the box which he stated he had not sent to McAuliffe and had never seen before. DeMarco suggested that these pages indicated that his telephone had been wiretapped. McAuliffe was interested, since his phone number was one of seven listed on one of the documents. He instructed DeMarco to note at the top of the documents the exact time and circumstances of how he first found them. This DeMarco did.

DeMarco delivered the documents to McAuliffe on January 29. McAuliffe, who was familiar with DeMarco's writing, thought that some of the writing on the documents looked like DeMarco's, and had him swear that none of the writing was his. On February 8, McAuliffe turned over the documents to John Takach, the Assistant Deputy Attorney General, for an official investigation. On February 11, Superintendent McMaster and Sergeant Joyce, of the OPP, who were already engaged in Project Vino, were assigned to this investigation.

A very extensive and thorough investigation followed. It was not hampered by the secrecy restrictions of Project Vino. The completeness of the investigation is illustrated by the steps taken by the investigators:

- all related documentation was examined and analyzed;
- all personnel of the NRPF who could possibly have had knowledge of such wiretaps were interviewed and subjected to polygraph tests;

- their handwriting was analyzed and compared with the alleged wiretap documents;
- the alleged documents were subjected to forensic analysis, including photocopy and fingerprint tests;
- DeMarco was interviewed three times, but refused to take a polygraph test;
- numerous other witnesses, including McAuliffe and DeMarco's lawyer, were interviewed;
- analysis was done of different photostat copies of the alleged wiretap documents, which other persons had received from DeMarco. Significantly, these other copies did not have the note at the top which DeMarco had put on the McAuliffe copies on January 24, 1985, immediately after allegedly seeing them for the first time;
- all telephone numbers shown on the documents were traced;
- all Bell Telephone employees who could possibly have knowledge of the alleged wiretaps were interviewed;
- all Bell records that could possibly relate to the alleged wiretaps were examined;
- all physical outlets of DeMarco's telephone lines were examined for possible physical evidence of a wiretap;
- all notations on the documents were analyzed, and it was established that they were not similar to those relating to a normal wiretap;
- the easy availability of this type of document was established by obtaining samples by writing to the government and pretending to be a student doing research on a school project; and
- numerous other more routine investigatory steps were taken.

So far as any involvement by Force members was concerned, all the test results were negative. The documents themselves were photostat copies of authentic forms used in connection with authorized NRPF wiretaps, but their contents were not authentic and did not contain the information that would appear on properly completed forms. Two of them appeared to have been used as memo pads to scribble memos and phone numbers; one of the others, with "Operational Report" printed at the top, had superimposed upon it a photocopy of a Buffalo, New York invoice, dated March 3, 1980, for a scale, and addressed to "DeMarco". The superimposed invoice obscured most of the form, but at the top, in the space headed "Object", DeMarco's name and address had been printed in ink by hand. Normally, in that space would be typed the purpose of the wiretap, such as "Drug Investigation — Marijuana (Trafficking)," not the name of the person under surveillance. Another had a photocopy of a Canada Customs import form, dated March 3, 1980, in the name of DeMarco's business, "Tiffany Coin," apparently for the importation of the same scale.

Sergeant Joyce produced for the Inquiry a transparency which he had prepared in a few minutes in a local stationery store on the previous day, which could be photocopied over a wiretap form to duplicate the appearance of the forms described above. It is inconceivable that any trained person contemplating an illegal wiretap would fill out an official report form at all, let alone fill it out incorrectly. Nor is there any explanation of why the forms would then be photocopied in such a way as to partially obscure the information on the form by the superimposition of an invoice identifying the "target" of the wiretap, unless it was done to cover information already on the form that indicated that the form originally showed some other "target."

The OPP concluded that the NRPF did not conduct an unlawful interception of DeMarco's private communications, and that the documents in question had been fraudulently prepared on stolen forms, or discarded forms taken from the garbage, by someone outside the NRPF who wished to make it appear that the Force had used them in an illegal wiretap. Since the investigation indicates that no member of the NRPF was involved, the question of who prepared the false documentation is beyond the mandate of this Inquiry.

I have no hesitation in concluding that the OPP investigation of the DeMarco wiretap allegations was proper, efficient and complete, and I compliment the investigators on the thorough manner in which they carried out their complex assignment. Counsel for the Board summed it up accurately when, in cross-examining Sergeant Joyce, he said:

"I would be shocked, sir, if anyone is going to take contest with the report. I want to put on the record, on behalf of the Board of Commissioners of Police, I doubt if I have ever seen a wiretap report which is more professional or an investigation more thorough than the one you did."[20]

The OPP investigation of the alleged DeMarco wiretaps was completed by the spring of 1986, and a 173-page report was prepared, but was not made public until the further wiretap investigation described below was completed. On December 4, 1986 there was a press release summarizing both investigations, and a copy of the report was provided to Chief Gayder the same day. The Board then issued a press release strongly endorsing the thoroughness of the investigation and its conclusions.

Meanwhile, by the late summer of 1985, while the investigation was still continuing, McAuliffe, who had as yet done no broadcast about the wiretap allegations, had become disenchanted with the investigation, and concluded that it was being ineptly executed. Between September 30 and October 2, he broadcast six programs, going beyond the DeMarco documents and strongly suggesting that there was proof of a series of illegal NRPF wiretaps, and called for a public inquiry. Other media joined in, and questions were raised in the legislature. As a result, the scope of the OPP investigation was widened beyond the DeMarco allegations. The second investigation was as comprehensive as the first.

In order to perform a wiretap, whether authorized or illegal, it is necessary to locate the target's individual telephone line, and only Bell Canada can provide this information. The investigation revealed that between January 1, 1980 and October 4, 1985, Bell had provided such information to the NRPF on 53 occasions. Of these, 16 were identified as authorized wiretaps. The OPP carefully scrutinized the remaining 37. They spent five months examining all the physical evidence surrounding each telephone connection and all documentation, and conducted 77 interviews. They found that the NRPF was using the information to install Dialled Number Recorders (DNRs). A DNR is a device which records the date, time, duration and dialled number of all outgoing calls, and the date, time and duration of all incoming calls from and to the line to which it is connected. It does not record the actual conversation, and so does not require an authorization under the interception of private communication sections of the *Criminal Code*. However, Bell Canada policy was that the necessary information would not be provided unless a search warrant had been obtained. During much of the period in question, the NRPF had somehow been obtaining the information without a warrant, and thus had been violating Bell policy. In 1989, the Federal Crown Law Office did a detailed study of the matter, and concluded that neither an authorization nor a search warrant was legally required. Accordingly, the actions of the NRPF were not illegal at the time, although it should be noted that the legal position may have been changed by the recent decision of the Supreme Court of Canada in *Regina v. Duarte*.[21]

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[20] Inquiry transcript, vol. 184 (May 24,1990): 104.

The OPP investigators reported that "no evidence was found to indicate anyone listened to or intercepted by any means unauthorized private communications."

The Commission investigators interviewed all OPP officers involved in the investigation, and all counsel were provided with copies of their interviews and of the OPP report. No counsel asked for further evidence.

I conclude that this second phase of the OPP wiretap investigation was proper, efficient and complete, and that there is no evidence to support the allegation that the NRPF conducted illegal wiretaps.

Because of the conclusions resulting from these investigations, it was not necessary for the NRPF to take any steps to correct identified problems or implement any recommendations arising out of the investigations. However, once again there arises the question of the advisability of concluding a well-publicized investigation with a brief press release. The investigations had established that the NRPF was not guilty of engaging in unauthorized interceptions of private communications. However, McAuliffe, not being aware of the thoroughness of the investigation, and presumably fretting at the delay in the release of any report, had told the public that there was proof that illegal wiretaps were occurring. A two-page press release assuring the public that all was well was unlikely to counteract McAuliffe's forceful presentation to the contrary. The lack of a more informative report was one of the factors that increased public suspicion of wrongful conduct in the NRPF and contributed to the pressure for a public inquiry.

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[21] *R. v. Sanelli (1990), 74 C.R. (3d) 281.*

2 OTHER ALLEGATIONS

(A) GITTINGS and L. and D.

David Gittings joined the St. Catharines Police Force in 1955. In 1964 he was assigned to the Criminal Investigation Branch (CIB) and following the formation of the regional force on January 1, 1971, he was a Sergeant in the St. Catharines CIB. He was promoted to CIB Staff Sergeant in 1975; to Inspector and Executive Officer to Chief Harris in 1977; placed in charge of the N°. 1 Division CIB in 1980; promoted to Superintendent in command of N°. 3 Division Welland in 1985, and to Staff Superintendent in command of Headquarters, Administration, in 1985. Over the years a number of allegations and rumours about him circulated both within and outside the Force.

(1) The reduced sentence allegation

On July 21, 1982, Acting Sergeant Ray Stankus of the NRPF interviewed one D., who was in custody on a number of fraud charges. In exchange for a recommendation for a reduced sentence, D. offered to provide information that he had heard from one L. that certain officers accepted payoffs for inside information. Sergeant Sandy Race of the NRPF received similar information from D., who named Inspector Gittings (then head of N°. 1 Division CIB) and Sergeant Marvin. Stankus reported the matter in a memo to Acting Sergeant Stan Krysa, and Race reported it to Staff Sergeant Peter Kelly. Race supplied recording devices to D. to obtain evidence of his allegations, but none was forthcoming.

The matter was also investigated by the OPP during Project Vino. In July, 1983, Sergeant Peter Lollar of the OPP interviewed D. in Warkworth Correctional Institute, where he was serving a sentence arising out of the fraud charges already mentioned. Obviously, his earlier proposition to Stankus had borne little fruit, since the evidence is that he was serving an eight-year sentence on that charge. D. offered information re Gittings and Marvin, in exchange for a transfer to a different correctional institution of his choice. Lollar reported the information to the Intelligence Branch of the OPP, but a "sweep" of their intelligence files revealed no similar information relating to Gittings or Marvin, and the matter was dropped as groundless. Apparently, similar propositions to exchange non-existent intelligence for a reduction in charges or sentences from incarcerated individuals are not uncommon. Unfortunately, because of the secret nature of Operation Vino, its conclusions were not published, and the rumours continued.

In November 1986, Mrs. Taylor's husband, a medical doctor, advised Mrs. Taylor that one of his hospital patients (assigned the pseudonym Pinocchio during the hearings to preserve his anonymity) had information of a serious nature relating to the NRPF, and wished to meet her. Unknown to Mrs. Taylor, Pinocchio was a sometime "speed" user, with a criminal record, well known to the police as a person of very doubtful credibility. Mrs. Taylor met him in his hospital room, and he told her that he was an NRPF informant; that a senior officer of the Force was the "eyes of organized crime" and was on the payroll of L; that on one occasion this officer had arrived at an "after-hours" bar run by L. and gave L. a package containing NRPF uniforms in exchange for an envelope of the same type as those handed to the regular employees on pay day. Pinocchio also told her that he had been offered a contract on VanderMeer's life and had received $10,000 on account but hadn't "done the job," and wanted her to meet an individual, also an informant, but then in jail, who had also been offered the contract on VanderMeer.

Pinocchio told Mrs. Taylor that he intended to go to the media with his information, and Mrs. Taylor arranged for a meeting with Pinocchio for herself and Michael Clarkson of the *Standard*, since she felt that Clarkson would not be sensational in his story without doing a great deal of research. She and Clarkson then met Pinocchio in his hospital room, and he repeated what he had already told Mrs. Taylor. Mrs. Taylor told VanderMeer of these meetings, and VanderMeer cautioned her against meeting with Pinocchio alone. Mrs. Taylor arranged two further meetings with Pinocchio in VanderMeer's presence in December 1986, and one with Pinocchio, VanderMeer, Peter Moon of the *Globe and Mail*, and herself, at an uncertain date in late January or early February, 1987, but before Gayder's suspension.

Both VanderMeer and Moon testified that they put little faith in Pinocchio's stories, and believed that they indicated this in their conversation with Mrs. Taylor, but Mrs. Taylor does not think they did. Mrs. Taylor repeated Pinocchio's allegations at the January 30, 1987 meeting in her home in the presence of Crossingham, VanderMeer and Shoveller, and Shoveller believes he warned her that Pinocchio was not a credible person, but Mrs. Taylor denies this. In any event, the IIT did not investigate Pinocchio's allegations, presumably because of VanderMeer's view of his credibility.

However, rumours about Gittings and organized crime persisted, and the matter was investigated by Commission investigators, who interviewed Lollar and five other members of the OPP who had had contact with D. concerning his allegations, but received nothing of substance. They also interviewed D., who stated he had no direct evidence but that L. had told him that he could arrange a reduced sentence for D. through his police contacts. L. had thereupon made a phone call, and D. had overheard L.'s part of the conversation, wherein Gittings' name was mentioned. Following the conversation, L. told D. that it was all set, D. would receive a sentence of only 18 months, but it would cost D. $25,000, presumably as a payoff.

On January 5, 1990, the investigators interviewed L., who stated that his only contact with Gittings was in Gittings' proper official capacity as a police officer, and that he had never received any information from Gittings or made any payoff to him. Questioned about the alleged phone call, he could not remember it or a discussion with D. about a reduced sentence, but stated that he might have been "setting up a scam" to get some money from D. On January 18, 1990, L. underwent a polygraph examination by a Metropolitan Toronto Police Force expert, who analyzed the resulting charts and concluded that L. was telling the truth when he denied ever having paid off Gittings. The Commission investigators also interviewed VanderMeer, Marvin and Gittings.

All counsel agreed that there was no evidence to support the allegations. Board counsel, who had been most critical of Gittings earlier in the Inquiry, and frequently spoke of rumours of infiltration of the Force by organized crime, stated that, although originally he had "actually had some doubts about Gittings," he was now convinced of Gittings' innocence of the charges, and urged a clear finding to that effect so that people such as D. and L. should not be allowed to get away with such a "charade." He stated that "The circulation of that rumour in and of itself may be responsible in one way or another for us being here. I don't know whose ears that rumour reached. I know that members of the Board of Commissioners of Police have harped on it since Day One, the fact there were allegations of organized crime's infiltration of the Police Force. I know that Chairman Taylor has mentioned many times the name "Gittings" coming up. She received that information from, of course, Pinocchio, inasmuch as Pinocchio was correct, insofar as D. may have told Pinocchio that, or L. may have told Pinocchio."

Pinocchio was interviewed by a Commission investigator in Nova Scotia, and took a polygraph test, in which he recanted his earlier allegations of payoffs to Gittings and VanderMeer and specifically denied having any personal knowledge of payoffs to either Gittings or VanderMeer. The Metropolitan Toronto Police polygraph officer, who accompanied the Commission investigator and administered the tests in Nova Scotia, having studied the four resulting charts, certified in his opinion that the answers were the truth.

On all of the evidence, I find that the allegations and rumours had no substance, but they provide an alarming example of the way unfounded scandal can spread and contribute to the excruciating trauma inflicted on innocent individuals falsely accused at a public inquiry.

(2) The biker cheque allegation

On October 20, 1988, shortly before the first evidence in this Inquiry was heard, the *Toronto Star* reported: "A senior police officer was heard in a wiretap talking to an Outlaws motorcycle gang member about a cheque. The officer told the biker the cheque was ready and could be picked up. (A police source told The *Star* that "cheque" is believed to be a code word.)" The report amounted to a very serious allegation that, through at least one of its most senior officers, the Force had been infiltrated by organized crime, and that therefore the administration of justice in the Niagara Region was in serious jeopardy. The article stated that the information was contained in a 25-page report, presumably the secret report from Operation Vino which was improperly leaked to the *Star* by some member of the NRPF who had access to it. Every inquiry witness who might have leaked the report denied under oath having done so. The report referred to an authorized OPP wiretap on May 13, 1981 of the Outlaws clubhouse during a joint forces operation involving the OPP, the RCMP and the NRPF. According to this report, K., "a known member of the Outlaws motorcycle gang telephoned Gittings and discussed picking up a cheque that Gittings had for him. Gittings advised a cheque was ready and could be picked up." The report suggests that allegations of bribery and obstructing justice against Gittings could arise from the interceptions, and that this information was passed on to the three NRPF members of the joint forces team, including NRPF Deputy Chief Walsh and Staff Sergeant Kopinak, the NRPF intelligence officer.

Commission investigators conducted an investigation, which revealed that, on March 12, 1981, in accordance with a search warrant, the NRPF seized a motorcycle belonging to K. and had it towed to a secure compound belonging to the towing company. After removing certain articles from it, the NRPF released the motorcycle to K. on April 8, 1981. To gain release of the motorcycle, K. paid the towing company $91 in cash. The records of the Regional Municipality of Niagara show that on May 8, 1981 a cheque was issued payable to K. for $91 to "reimburse for storage expenses." I conclude that this was the "cheque" referred to by the *Toronto Star* "police source" as being a "code word," presumably intending to imply something evil. One is left to wonder at the imagination and reliability of media "police sources" who can do such harm to the reputation of police personnel and forces.

I am satisfied that there was no wrongdoing on the part of Gittings or any other police person in relation to this incident.

(3) Miscellaneous rumours

A number of other more minor allegations of impropriety on the part of Staff Superintendent Gittings were investigated by the Commission investigators, briefs were prepared and circulated to counsel for all parties having standing. From having presided over these hearings, I am satisfied that certain of the parties would not have agreed to simply file the briefs and dispense with evidence by way of cross-examination on these matters had they not been satisfied that there was no reason to pursue them further.

I accordingly find that rumours of misconduct and possible corruption within the NRPF resulting from those allegations are unsubstantiated.

(B) PROJECT PROVE

In early 1985, N°. 2 Division (Welland) CIB commenced an investigation of a series of break-ins believed to be connected to a drug operation. The investigation was named "Project Prove." It included surveillance of the residence of one of the principal suspects from a trailer parked near the residence in an industrial park. Shortly after the surveillance commenced, the Force was advised through an informant that the suspects were aware of the project, and this was confirmed by another informant. As a result, the project was shut down after only two weeks.

Not surprisingly, rumours circulated within the Force that information about the operation had been leaked by a member of the Force. These rumours were brought to the attention of the Commission investigation team, who did an extensive investigation. Every person remotely connected with the project, including 22 officers and civilians, were interviewed, and full transcripts are contained in the Commission brief on the subject. All persons interviewed who had heard rumours of a leak stated that their suspicions were based on nothing but hearsay. No evidence was found to suggest a leak by any Force member.

However, investigation revealed that the surveillance trailer was parked beside a large building with bays that were rented out by the month to different people to repair their vehicles. Some of these people were of a somewhat unsavoury reputation, and the investigators learned that there was a good deal of talk amongst them about the trailer. The surveillance officers were driven to the trailer in CIB cars readily identifiable by any experienced criminal. Other officers brought coffee or lunch to those on duty, using CIB cars. Early in the operation, persons renting the bays approached the trailer wanting to know who the officers were watching. It seems obvious that the persons under surveillance could have learned of the police operation because of the clumsy methods employed by those setting it up.

Copies of the Commission brief were provided to counsel for all parties having standing, and none suggested that the matter justified the calling of oral evidence. The episode is another example of the way in which the NRPF rumour mill circulated unfounded rumours which undermined confidence in the integrity of the Force in the minds of other members of the Force, of the public, and, indeed, of members of other forces.

I conclude that the rumours of misconduct on the part of any officer in connection with this operation had no basis in fact, but instead arose as a result of gross negligence in allowing too much observable police activity in the area of the surveillance project.

(C) CARD GAMES

(1) The Leonard Hotel rumour

Over the years there had been rumours within the Force of a high-stakes poker game at the Leonard Hotel in St. Catharines, attended by crime figures and police officers, with the implication of possible confidential information being passed along to the criminals.

On January 3, 1985, there was a meeting of a number of persons concerned about rumoured corruption in the NRPF. This was one of the meetings that led to the formation of the OPP Project Vino.[1] The meeting was held at the home of Stephen Sherriff. Present, in addition to Sherriff, were Staff Sergeant Sandelli of the Metropolitan Police Department and Sergeant MacCharles of the OPP, Constable Peressotti and Sergeant VanderMeer of the NRPF, and Constable Gill of the NRPF, whom VanderMeer had brought along to relate his information regarding misconduct in the NRPF. Sandelli prepared a memorandum dated January 9, 1985, reporting on this meeting. In it, referring to Gill's information, he states: "... There was continuous reference to card games held in Niagara Region and frequented by high-ranking members of the Niagara Regional Police Force from the Chief down to Sergeants. Also present at these games were organized crime figures such as 'SB' [pseudonym substituted by me]."

In his evidence before this Inquiry, Gill testified that the rumour was that the game had started at the Leonard Hotel and then moved to Schenck's farm.

No evidence whatsoever was advanced, and none was found by the Commission investigators, to support these allegations. Although VanderMeer was present when Gill repeated the rumour, he apparently gave it little credence, since the Leonard Hotel card game was not investigated by the IIT, although the card game held in the Schenck farm greenhouse received considerable IIT attention.[2] It seems probable that the rumour of Gayder's participation at card games with criminals at the Leonard Hotel was based on the Schenck farm card games, and, like many of the others circulating in the Niagara Region rumour mill, got "better" and more confused in the telling. I conclude that the rumour was without foundation.

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[1] See Project Vino, p. 137.

[2] See Schenck farm, p. 159.

(2) Schenck farm

Every Wednesday night for some 30 years James Gayder and some of his friends got together for a game of poker. It could not be described as a high-stakes or heavy drinking game – the ante was 5 or 10 cents, with a maximum of three 25 cent raises, and Gayder's evidence was that about six bottles of beer, in total, were consumed during the evening. Over the years, some players dropped out and others joined. In 1983, Gayder's uncle, who was one of the group, died and Sergeant Allan Marvin replaced him. By March, 1987, the regulars included Gayder, Lake, Parkhouse, Marvin and a couple of local farmers including Mr. Schenck. Originally the games were rotated amongst the participants' homes, but due to spousal objections to cigar smoke, the game moved to the lunch room in the greenhouse on the Schenck farm.

In June, 1981, OPP officer Detective Sergeant Wilhelm submitted to his superiors a memorandum of an investigation in the Niagara Region regarding credit card fraud, and referred to the fact that Sergeant Marvin, the head of the four-man fraud unit of the NRPF, was suspected of "interference in criminal investigations and consorting with criminal element," and referred to a rumour that Marvin "is believed to play poker on a regular basis with Deputy Chief Gator [*sic*]. Deputy Chief Gator is apparently well respected but mentioned here only as a possible influence for Marvin." In February 1985, Wilhelm delivered another report that he had received information from NRPF officers Melinko and Madronik that "Gator [*sic*] and Marvin and friends, play cards at Shank's [*sic*] farm greenhouse. The fairly new Deputy Chief, Parkhouse is also a good friend of Gator's and plays cards in that group as well."

Peter Moon testified that VanderMeer, during their first meeting in July 1985, expressed his concern about these reports. Denise Taylor testified that in the fall of 1986, Gill told her of the rumours of Leonard Hotel poker games, and in January 1987, Sherriff told her of allegations that Gayder and Walsh attended poker games with well-known criminals. He did not mention that he had heard this from Gill, and she apparently accepted the information as supportive, rather than repetitive, of Gill's suspicions. She testified she also heard the rumour from other sources, including Baskerville and Pinocchio. Unfortunately, neither Gill nor Baskerville mentioned that one of their sources had been this same Pinocchio. The rumour was also recorded in the OPP's Vino report, quoting from Wilhelm's 1981 memorandum.

Shortly after Gayder's resignation, members of the IIT commenced surveillance of the Wednesday night poker games. For some six weeks they recorded the car licence numbers of all persons attending the games, and had them checked by the Department of Transport. They eventually decided that there was no substance to the rumour that Gayder was playing cards with sinister characters.

I conclude that there was nothing improper about the card games attended by Gayder. However, while I of course do not question the right of any officer to meet with his friends in his off-duty hours, if, as I assume to be the case, Gayder was aware of even some of the rumours (whether well-founded or not) about Marvin, it would have been better judgement on his part to have introduced someone else to the poker group when a vacancy arose due to his uncle's death in 1983.

(D) VANDERMEER DEATH THREAT

Reference to a death threat to Sergeant VanderMeer kept recurring during the Inquiry hearings. Being a criminal matter, it would normally be outside the Commission's terms of reference, and would be referred to Chief Shoveller to be dealt with as a regular police matter. However, both Sergeant VanderMeer and his counsel repeatedly referred to lack of action by either of the two police forces which investigated it as indicating some interference by the higher ranks of the NRPF, perhaps symptomatic of corruption. Accordingly, in the hope of clearing the air, I shall set out the facts presented to the Commission.

During the summer of 1984, the RCMP was conducting a drug investigation in the Niagara area, and one of its undercover officers was working with Pinocchio as an informant. On August 15, 1984, the two were together in a health club owned by C.[3] In conversation, C. asked: "What about frying a cop?" and stated he was referring to VanderMeer whom he considered was responsible for his troubles with the law. The RCMP agent reported this to his superiors, who felt it might constitute a death threat, and the next morning the RCMP officers met with Staff Superintendent Shoveller, and officers Chambers, Chandler and VanderMeer to discuss the situation. The NRPF offered to move VanderMeer out of the country while the matter was cleared up, but he was unwilling to leave his family, and declined. The NRPF and RCMP agreed to co-operate in an investigation. C. had asked Pinocchio to see him again, and that evening the RCMP agent and Pinocchio met C. wearing body packs. The conversation as taped was very general, and parts were inaudible. C. complained of VanderMeer's actions in investigating him and Pinocchio said: "That's Corny for you, well, Corny VanderMeer ... (INAUDIBLE WORDS) he was talking about Corny yesterday. Did you want trouble?" C. answered: "No" The conversation then referred to other matters, and then C. said: "If you hurt VanderMeer physically, and if, you know, I mean, he heals, eh." The informant asked: "You're saying just, you want him hurt, humiliated or ...?" C. replied: "Yeh — — hurt and humiliated, and humiliated would be the hardest ... hurt, what do you mean?" The agent replied: "I don't know, broken bones?" and C. said; "We're talking about a cop." The conversation then turned to other topics. The investigators concluded that "frying a cop" might have meant what was later referred to as humiliating VanderMeer, and there was no other credible evidence of a death threat. The evidence was reviewed with Superintendent Shoveller and he decided that there was insufficient evidence to lay a charge of "counselling murder," and that there was nothing to be gained by pursuing the matter.

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[3] This is the same "C." referred to in the Typer Incidents, commencing at p. 175.

On August 28, 1984, Pinocchio, wearing a body pack, had another conversation with C. Parts of the tape recording were inaudible. C. again complained about VanderMeer, and said: "Like, I think that even if he was walking across the street (inaudible) VanderMeer's car, like (inaudible). All I want to do is (inaudible) next week. (inaudible) do it legally. and, you know, I don't think that (inaudible)." Later, following a reference to VanderMeer, he said: "... I'm going to the Ontario Police Commission on this ... the pressure they put on me and all the s - - - that they put me through, well, I've got a lot of things to report to them." Later, he said, presumably referring to VanderMeer: "Legally, I'll beat him, illegally I'll end up in jail."

Neither the RCMP nor the NRPF did any further investigation into the threats. VanderMeer was very upset at this, believing there was sufficient evidence to lay charges. On September 19, 1984, C. lodged a citizen's complaint against VanderMeer, claiming that VanderMeer was harassing him and conducting himself improperly in his method of obtaining witness statements against C. Officers Chandler, Chambers and Berndt were assigned to investigate the complaint. While interviewing the witnesses, Chambers discovered that VanderMeer was also reinterviewing these witnesses, and Chambers heard that VanderMeer felt that Chambers was "obstructing justice" by interviewing witnesses who were involved in criminal charges against C. in which VanderMeer was the officer in charge. Chambers consulted Deputy Chief Walsh, recommending that the investigation of C.'s complaint be shelved until the criminal charges against C. were disposed of, and Walsh agreed. VanderMeer felt the investigation was called off because of bias against him, and became deeply suspicious of Chambers and Walsh.

At the December 27, 1984 and January 4, 1985 meetings of VanderMeer and Peressotti with Sandelli and MacCharles of the SEU at Sherriff's home[4] the death threat was discussed. VanderMeer stated that there was evidence to lay charges and could not understand why charges had not been laid. It was apparent that he felt there was something sinister about the lack of action. These meetings resulted in the setting up of "Project Vino" by the OPP, and one of the matters to be investigated was the death threat. OPP

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[4] See p. 137.

Sergeant Joyce examined the notes of the undercover RCMP officer and the transcripts of the tapings of Pinocchio's conversations with C., and came to the conclusion that there was no point in investigating further.

On July 12, 1985, Peressotti learned from a criminal, referred to under the pseudonym of "Goldilocks," whom he was investigating on an unrelated matter, that in early 1984 Goldilocks had shared a jail cell with C. He stated that C. had told him that he was going to pay someone to kill VanderMeer. Peressotti filed a GOR on this on July 15, 1985, and arranged for his partner Gino Arcaro to investigate it. Arcaro interviewed Pinocchio and Goldilocks, the two informants regarding the death threat, and obtained statements from both. Arcaro questioned Pinocchio's credibility because, while he was talking about the death threat, he "relayed an enormous amount of information about various people" which Arcaro considered "far-fetched," particularly an allegation that VanderMeer "had mobsters over for supper." Goldilocks stated that C. had offered him a contract on VanderMeer's life which would pay him $25,000 for each year he spent in jail for the killing. Arcaro then consulted Crown Attorney Alan Root, who read over the statements and said there was insufficient evidence to prosecute because of the criminal records and credibility of the two witnesses. (Goldilocks was at the time facing a charge of perjury, and Pinocchio, who had had drug problems, was notorious for his unreliability.)

There had been some suggestion of interference with the laying of "counselling murder" charges against C., but Arcaro testified that no one interfered with his investigation, and that no matter what the Crown Attorney's opinion was, he himself would have laid a charge had he thought the evidence warranted it. However, based on the lack of credibility of the witnesses, he did not do so. Arcaro filed his report on July 26, 1985, clearing the allegation as "unfounded" and met with Joyce, VanderMeer, Peressotti, and Sherriff to so advise them.

VanderMeer was unhappy not only with the failure to lay charges, but also over the delay in disposing of C.'s complaint against him, and Arcaro understood that he intended to complain to the OPP because he felt that there was interference from within the Force in protecting C. VanderMeer did discuss his concerns with Joyce, and suggested that the failure to lay charges of "counselling murder" amounted to evidence of corruption in the Force in protecting C., but apparently no further action was taken. He later arranged for Peter Moon of the *Globe and Mail* to publish articles on October 18 and 20, 1985 about C. and the NRPF, which were later included in councillor Mal Woodhouse's brief to regional council calling for an inquiry into the NRPF.

In summary, the death threat allegation was originally investigated by officers of the RCMP and NRPF and the evidence was reviewed by Superintendent Shoveller who concluded that there was not sufficient evidence to justify a charge. It was then reviewed by OPP Detective Sergeant Joyce as part of Project Vino, and he apparently concluded that it did not warrant further action. It was further investigated by Arcaro, who was very concerned about it, but eventually reported it to be "unfounded."

On the basis of the wiretaps and the statements of the informers, particularly depending on the interpretation one places on parts of them, there was ample reason for VanderMeer's sincere belief that his life was threatened. It is difficult to be completely subjective in such circumstances. Thus, it is quite understandable that VanderMeer, as the subject of the alleged threats, would be deeply emotionally involved, and would expect and demand that the person responsible be apprehended before serious harm resulted. However, I cannot fault the conclusion of the three independent officers, Shoveller, Arcaro and Joyce, as well as the Crown attorney, that the only evidence to support the allegation was that of two totally unreliable witnesses and of taped conversations that were open to a variety of interpretations, none of which provided sufficient grounds to lay charges. Suspicions of interference in the investigations were not supported by evidence. There is no suggestion in the evidence of incompetence on the part of those involved in the investigation, and the delay in disposing of C.'s complaint against VanderMeer seems to be explained by Chamber's reluctance to proceed with the complaint investigation in the face of VanderMeer's reported objections to interference with his investigation of charges against C.

I conclude there is no evidence upon which I could find misconduct on the part of members of the NRPF in failing to lay criminal charges in these circumstances.

(E) JOHN ADAMS AND OPERATION SKYLAB

As mentioned above, on October 20, 1988, just before the Inquiry hearings commenced, the *Toronto Star* published an article on page one headlined; "Niagara Police linked to crime, documents show," and continued on page two with the headline; "Probe of Niagara police cites ties with bike gangs." The article obviously was based on a leak of the Project Vino report, and set out a number of sensational allegations of corruption against the NRPF which are covered elsewhere in the present report, including the statement: "Another wiretap picked up conversations between two bikers indicating a constable was tipping them off about undercover surveillance." The allegation was investigated by the Commission investigators.

In the fall of 1983, Project "Skylab" was commenced as a joint NRPF/OPP investigation into alleged criminal activities of the St. Catharines chapter of the Outlaws Motorcycle Gang, and it continued for 15 months. Ultimately, on January 20, 1985, 84 individuals were arrested on a variety of charges, 72 pled guilty and the other 12 who pled not guilty were convicted after a trial. During the investigation, the Skylab team made extensive use of authorized wiretaps. On Saturday, April 21, 1984, three communications between Outlaws members were intercepted, indicating that a member of the Outlaws had received information from Constable John Adams of the NRPF that the police were aware that the Outlaws were holding a rally in London, and that they were going to be watched all the way to Grimsby, the westerly boundary of the Niagara Region. A summary of the calls was included in the Daily Supplementary Report (DSR) prepared by OPP Corporal Wilkinson. The summary was not entirely accurate, since it stated that Adams had spoken to a member of the Outlaws, and that the surveillance continued to London.

Staff Sergeant Boston who was in charge of the NRPF Intelligence Branch and one of the joint coordinators of the project, listened to the tapes and was satisfied that there was no need for further investigation since the fact that Outlaws were being watched on the way to London would have been on the police radio and could be monitored by anyone. The OPP technical coordinator reported these intercepts in his regular bi-weekly report which was distributed to the OPP Director of Criminal Investigation, to the OPP Director of Intelligence, to NRPF Deputy Chief Walsh, and to Staff Sergeant Boston. In May 1984, Staff Sergeant Boston was transferred, and Staff Sergeant Chambers took over his role. In reviewing the various reports, Chambers became aware of the Adams intercepts and questioned Boston, who advised him they were not a matter of concern. Nevertheless, Chambers listened to the tapes and satisfied himself that no further action was required, but requested that he be immediately notified if there was any further reference to Adams in wiretaps. Project Skylab lasted for another year, but there were no further references to Adams.

Presumably because they saw no reason for concern about the matter, and investigation of very serious criminal offences was a priority, none of the several officers of the OPP and NRPF who looked into the matter filed a report that they were satisfied that no further investigation was warranted. Thus, in 1985, during Project Vino, when OPP Officers Joyce and McMaster searched intelligence files for information of corruption within the NRPF, they found the DSR from Project Skylab. They checked with Corporal Wilkinson, who advised them he was not aware of any results of any investigation. Because of the restrictions to which they were subject of not disclosing Project Vino to members of the NRPF, they were unable to interview the individuals concerned, and simply summarized the matter in the Project Vino report.

The summary stated that Project Skylab wiretaps had revealed that: "On April 21st, T.F. and S.M. (two associates of the Outlaws motorcycle gang) spoke by telephone and T.F. indicated that Constable Adams told him that the police had set up a surveillance to London. Later the same day, T.F. spoke by telephone to D.S. (an Outlaws motorcycle gang member) and told D.S. a cop was giving them information about stuff he had heard on the police radio. Investigation revealed that T.F. received this information from Joe Toth. It is alleged that Adams told him (Toth) about the surveillance. Corporal J.E.D Wilkinson, OPP Technical Support Branch was responsible for coordinating this project. The contents of the aforementioned telephone calls were made known at the time to Staff Sergeant W. Boston, NRPF Intelligence Unit and Deputy Chief Walsh. The results of any investigation were not provided to Corporal Wilkinson." (I have substituted initial pseudonyms for some of the names). This summary was included in the leaked Project Vino report which was the source of the October 20, 1988, *Toronto Star* article.

Investigation by the Commission investigators revealed that Constable Adams was a motorcycle buff, and was the owner of a very fancy Harley Davidson motorcycle. One Joe Toth was at the time the only Harley Davidson mechanic in the Niagara Peninsula, and serviced and repaired Harley Davidsons for many of the members of the Outlaws Gang. Adams also had his motorcycle repaired by Toth and was on friendly terms with him, and according to Toth, would "drop by to say hello, drink a coffee and that's it." Neither Toth nor Adams could remember any conversation about police surveillance of the Outlaws.

On the evidence, it appears probable that Adams, while attending at Toth's garage, did tell Toth, perhaps as a matter of gossip since it was not particularly secret, that the police were aware of the Outlaws rally in London and would be monitoring them until they left the Niagara Region, and Toth passed the information on to an Outlaws member. If so, although not in itself particularly serious, Adams' conduct was improper because of the appearance it created, and was partially responsible for the sensational and extremely harmful allegation against the NRPF which appeared on the front page of the nation's largest newspaper, without any real foundation for it. If the confidence of the public in the NRPF needs to be restored as the terms of reference suggest, the manner in which the substance of the sensational newspaper headline and article evolved provides a graphic example of how that confidence can be unjustifiably undermined.

However, a further lesson can be learned from this unfortunate episode. Although the allegation against Adams was potentially very serious, it was left unresolved by both Forces involved because their officers satisfied themselves that there was no reason for concern, but they failed to record that fact or notify it to those to whom the Skylab DSR containing references to the wiretap had been sent. It is recommended that a policy be established for the reporting of the results of the investigation of and/or clearance of such allegations, regardless of the investigator's conception of their importance.

On the evidence, I conclude that Adams did tell Toth, as a casual matter of gossip, perhaps because the Outlaws London rally was mentioned and he wanted to exhibit his knowledge, that he was aware of it because he had heard over the police radio that the police were monitoring the gang to Grimsby. I do not conclude that there was any intention on the part of Adams to reveal secret police information to a motorcycle gang, but Adams exhibited poor judgement in disclosing to a mechanic, whom he knew did work for the Outlaws, any knowledge he had about their activities.

(F) ALLAN MARVIN

The major allegations against former Sergeant Allan Marvin are contained in the Wilhelm memo referred to earlier in relation to Project Vino, or in *Police Act* charges laid against him. He resigned from the Force on May 13, 1988. The allegations were of the kind that the Supreme Court of Canada ruled in *Starr et al. v. Houlden*[5] were beyond the jurisdiction of a public inquiry. The Commission accordingly did not investigate their validity, except for two allegations which fell within the Commission's mandate because they suggested that the Force had been infiltrated by organized crime.

The first was set out in the Project Vino Report, as follows: "it was further alleged that a conversation involving Sergeant Marvin was lawfully intercepted during an RCMP technical surveillance project. It was alleged that Marvin gave particulars of RCMP surveillance cars to an unknown person, knowing the information would jeopardize an investigation." The allegation was investigated by Project Vino investigators, who reported: "Investigation revealed that it was not Marvin who was intercepted, but two other persons discussing contacting him for licence numbers. Shortly thereafter, it was learned that he obtained the licence numbers." There was no evidence as to who provided them. Apparently this was not followed up, perhaps because to do so might have revealed the existence of Project Vino.

The matter was raised before this Commission by Sergeant VanderMeer, and so was investigated by the Commission investigators. Their investigation disclosed that the licence number was that of a vehicle owned by a drug store on Bloor Street in Toronto, which was unrelated to the RCMP investigation. There was also no evidence that Marvin had obtained it or provided it to anyone.

The second allegation was that Marvin and then-Inspector David Gittings were "on the take" from "organized crime figures." The source of this allegation was "D.", the same D. who was involved in the Gittings/Reduced Sentence Allegation covered earlier. The Commission investigators could find no credible evidence to support this allegation.

There was also a general allegation that Marvin took part in poker games with organized crime figures. Investigation revealed no foundation for this rumour. Marvin did play in the Schenck farm poker games referred to earlier, which it was agreed included no crime figures.

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[5] See Appendix 1.

(G) THE PETER KELLY MATTERS

(1) The transfer

In her cross-examination of Deputy Chief Peter Kelly, counsel for VanderMeer raised the matter of Kelly's 1986 transfer from St. Catharines to Niagara Falls when he was an Inspector. Apparently counsel was aware that he had not been happy about the transfer, and she asked:

> " Q. I mean, who did you ultimately see as responsible for your transfer, sir?
> A. Mrs. Betty Parnell.
> Q. Mrs. Parnell was responsible for your transfer?
> A. Yes.
> Q. She was the secretary to Chief Gayder?
> A. Yes."[6]

This exchange triggered protests and protracted debate amongst some of the counsel as to the motives behind and relevancy of the questions, but the attendant publicity made it necessary to clear up the matter, and it was investigated by the Commission investigators. Twelve witnesses were interviewed, and an extensive brief including transcripts of the interviews and a copy of all relevant orders and documents was filed as an exhibit and distributed to all counsel. It appears that Kelly, in the fall of 1986, was the Inspector in charge of the CIB in St. Catharines, and was responsible for an internal investigation of an allegation contained in an anonymous "poison pen" letter against an officer identified only as "X". Officer X's father was known to be a friend of Elizabeth Parnell, Chief Gayder's secretary. At one meeting with Gayder during the course of the investigation, at which Kelly was present, Gayder had called in Mrs. Parnell and she had explained that she had noticed that a word in the anonymous letter was misspelled in the same way that it had been misspelled in a document filed in a lawsuit against the Force brought by a person she knew and who was known to Officer X. This connection, which was later confirmed, turned out to be critical in resolving the matter. At one point Mrs. Parnell complained to Gayder about the conduct of the investigation, and Kelly felt that she was more involved in the investigation of her friend than a secretary should be.

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[6] Inquiry transcript, vol. 200 (June 21, 1990):36.

Shortly after the police investigation was concluded, with a finding that the allegations against Officer X were unfounded, 14 officers were transferred to new positions by a Routine Order, dated November 11, 1986. Included was a transfer of Inspector Kelly to Niagara Falls as inspector in charge of N°. 2 CIB. Kelly stated that following the investigation, he had heard rumours that he and his immediate superior, Superintendent Leigh, were going to be transferred, and at 11.00 a.m. on November 11, he and Leigh asked Deputy Chief Parkhouse if this was true, and received a negative reply. At 2.00 p.m. that day he was called in to Parkhouse's office and told of his transfer. He asked the reason, and was assured that it was because his talents were needed in Niagara Falls. He stated that, following publication of the transfer order, Sergeant Peressotti, and probably Sergeant VanderMeer, and several other St. Catharines officers expressed their regret at his leaving, saying that the "Queen Bee" (referring to Mrs. Parnell) was responsible, that the same thing was told him by officers in Niagara Falls when he arrived there, and that he learned that none of the senior officers who would normally know in advance of such a transfer had been aware of the transfer until the day it happened. He stated that going to Niagara Falls was "a treat to me" because he lived nearby and "Niagara Falls is probably the plum of CIB, it's where most of the action is, most of the violent crime, what turns on a detective ... It was my highest ambition to be the CIB Inspector of N°. 2 Division. So I was quite happy with that, but these rumours bugged me ..."[7]

Kelly approached Parkhouse and asked him if it was felt that he had mishandled the Officer X investigation, and was told that was not so. He then asked whether Betty Parnell had had anything to do with the transfer, and he testified that Parkhouse shrugged his shoulders, looked down and did not reply. From this, Kelly concluded that Mrs. Parnell was responsible for his transfer.

Peressotti was interviewed, and stated that he was stationed in Welland at the relevant time, and had heard of Kelly's transfer and that "Betty, or Elizabeth, Parnell may have been a motivator behind the transfer."[8] He said he did not know the source of that information, or whether it was true, and he had no personal knowledge of the reasons for the transfer. Sergeant VanderMeer declined to be interviewed.

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[7] Statement (Aug. 20, 1990):15

[8] Statement (Aug. 25, 1990):2

Gayder was interviewed and stated that in 1986 all transfers between divisions were discussed at senior officers' meetings, that transfers were recommended by either the officer's superintendent or the Deputy Chief, and once a decision was made, a Routine Order was prepared for his signature; that Mrs. Parnell would not be present at such a meeting and would not be associated with the process in any manner, and that he had no idea why Kelly was transferred. He did remember that around that time four staff sergeants had been promoted to inspector rank, and he believed that the transfers were made as a result.

Deputy Chief of Operations Parkhouse was interviewed and stated that transfers were the responsibility of the Deputy Chief of Operations, that he had been transferred to that position only a month before the transfers in question; that he did not remember Kelly questioning him about his transfer, but that Kelly was an efficient officer and his only recollection was that he was transferred to "bolster another area."[9]

Mrs. Parnell was interviewed and explained that her only input on the Officer X investigation was in relation to the misspelling clue; that one of the investigating officers had given her the letter to examine since she knew the officer involved; that she had spotted the misspelling and realized she had seen it before; that she went to the files and found a document with the same misspelling that she felt identified the author of the poison pen letter and gave the information to Gayder; that she took no other active part in the investigation, and had never spoken to Gayder about Kelly or his transfer.

Retired Superintendent Leigh was interviewed and recalled that he had heard rumours about his own possible transfer. Kelly was in Leigh's office when Parkhouse came in about another matter, and Leigh asked him whether he (Leigh) was going to be transferred to Niagara Falls, and Parkhouse replied that he was not. He did not recall any reference to a transfer of Kelly. He was upset when Kelly came in later to tell him of his (Kelly's) transfer because he (Leigh), as Kelly's superior officer, had not been advised in advance, and he understood from Kelly that Kelly blamed the Officer X investigation for his transfer.

A number of other officers who might be expected to know of any irregularities in connection with the Kelly transfer were interviewed, but none had any evidence of any influence exerted by Mrs. Parnell in the transfer of Inspector Kelly, although some had heard rumours to that effect.

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[9] Statement (June 28, 1990):8.

I accordingly find that there is no evidence to support this allegation which was apparently widely circulated amongst members of the Force and which caused so much controversy and publicity when it was elicited from Deputy Chief Kelly on the witness stand. It is another unfortunate example of the widespread willingness of people within the Force to accept and pass on rumours harmful to the image of the Force without bothering to question their factual background.

(2) The boat conspiracy

Because of the flimsy nature of this rumour Commission counsel stated he had not intended to bring this matter before the Inquiry, but Board counsel vigorously argued that it was necessary "to clear it up" and cross-examined Deputy Chief Kelly about it. As a result of the attendant publicity, I must go into it in some detail.

Robert Richardson, at one-time a partner of Peter Kelly, retired from the NRPF as a staff sergeant following 38 years on the St. Catharines and regional forces, and spent his winters in Florida. Sometime in April or May, 1987 after his return from Florida, he met Ted Johnson, the Administrator of the Niagara Regional Police Association, in an elevator at police headquarters in St. Catharines. The IIT investigation was mentioned, and Richardson told Johnson that in March or April, 1987, while having a few drinks with Peter Kelly, who was staying near him in Florida, Kelly had told him he was putting together an investigation team to investigate Gayder. He said that Kelly told him that Shoveller, former Chief Harris, Superintendent Leigh, Kelly and one other person whose name Johnson could not remember, had met on Leigh's boat on Lake Ontario, and had discussed ways of getting rid of Chief Gayder. A rumour to that effect thus started, and was met by a counter rumour that Johnson, Deputy Chief Parkhouse and retired Sergeant Edward Lake (rumoured to be supporters of Gayder) had conspired with Richardson to fabricate the allegation of the boat conspiracy.

Two Commission investigators interviewed Richardson in Florida. He stated that Kelly was a good friend of his, and that over a few drinks Kelly had told him about "putting together" the investigation team that was investigating Gayder; that Kelly had also told him that on Wednesdays he often went out with Leigh on Leigh's boat. Richardson knew that Kelly was friendly with Harris who had been very upset about not being allowed to defer his retirement, and at being replaced by Gayder. Shoveller was Kelly's boss, and Richardson "assumed that they'd probably be put together ... they'd probably go out on the boat and maybe discuss it where it was out of earshot of anyone that might overhear." He further stated that Shoveller must have known of the investigation, and "Harris was so close to them ... [and] there wasn't any love lost between him and Gayder ... [and] I just assumed that they would go out on his boat ... it would be a safe place to go if you wanted to discuss business and you didn't want anyone over-hearing it ... But if I left the impression that ... these guys were all there, I was just surmising that they could have been all there." Richardson also said that he may have mentioned to Parkhouse about the boat and that "probably Shoveller and Harris and everybody probably been getting together put this investigation together just to get rid of a few guys on the Force. Especially St. Catharines fellows ... Whether there was anything to it or not, I don't know."[10]

Deputy Chief Kelly was cross-examined by Board counsel, and unequivocally denied any such "conspiracy" or that he had ever been on a boat with Shoveller and Harris.

There is absolutely no evidence to support either the boat conspiracy rumour or a rumour that Gayder, Lake and Johnson had "conspired" to concoct and circulate the boat conspiracy story.

Once again, the whole rather ridiculous episode (Kelly characterized it as "idiotic") points up how rumours based on nothing but someone's fantasy were picked up and circulated within this Force.

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[10] Statement (Dec. 1, 1988): 3, 5, 7.

(H) EDWARD TYPER

Sergeant Edward Typer joined the NRPF in 1971. In 1983 he was a sergeant in charge of the technical section of the NRPF Intelligence Unit. Martin Kalagian was at that time a constable, and the only other member of the section. The section was responsible for installation and maintenance of surveillance devices. In the early 1980s there were several allegations concerning Typer, some of which were investigated by the OPP during the 1985 Project Vino. Two of the allegations were that Typer had obstructed justice by interfering with an effort to tape-record a conversation between C. and an informant, and by conveying police information to C. C. was a local business man who operated several fitness centres in Southern Ontario. His father was a friend of Typer's.

(1) The screwdriver incident

On December 15, 1983, Sergeant VanderMeer submitted a memorandum to Inspector Gittings regarding C.'s relationship with G.H.,[11] as being involved in money laundering. VanderMeer had received information incriminating C. from C.'s estranged wife who stated that C. had spoken of a friend in the NRPF named "Ed". On December 3, 1983, the home of Mrs. C.'s lawyer was damaged by a shotgun blast through the front door and one through an upstairs bedroom window. C. was suspected of being responsible, and on December 5, 1983, VanderMeer arranged to tape a telephone conversation between an informant and C., in which the shooting would be brought up. For this purpose VanderMeer obtained a "body pack" recorder, called a "Nagra", and gave it to Typer, as the technical officer, to install fresh batteries, and a tape. The informer, wearing the recorder, then had a conversation with C., but the recording was of such poor quality that it was useless. VanderMeer had Constable Kalagian of the technical unit check the recorder. Kalagian thought that one of the microphones was malfunctioning, and installed a new one. The informant, wearing the body pack, had another conversation with C., but again the recording was of very poor quality. VanderMeer then learned from Constable Peressotti that while installing the batteries, Typer had "stuck a screwdriver inside the guts of the open tape recorder." All this was set out in VanderMeer's memo to Gittings, but no reply was received by VanderMeer. VanderMeer felt this lack of a reply supported his belief that investigation of allegations of corruption within the

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[11] The lawyer referred to at p. 183.

Force could not be trusted to the Force to be dealt with internally, and that this justified him in secretly taking part in Project Vino. Nevertheless, neither VanderMeer nor Peressotti investigated the incident, nor did they request the OPP to investigate it through Project Vino.

On December 9, 1983, four days after the failed taping, Constable Kalagian sent the recorder to the supplier complaining of the poor quality of the recordings. The company checked the recorder, repaired the plug ends of the microphones, found nothing else wrong and returned it in good working condition. It is apparent that no physical damage was caused to the interior of the recorder by Typer, and that VanderMeer's suspicions were caused by Peressotti's recollection of Typer's inserting a screwdriver into the back of the machine which seemed to accord with the recorder's failure. On the evidence, the only logical explanation is that, what Peressotti, in retrospect, interpreted as a possible interference with the workings of the recorder, was Typer's use of the screwdriver to open the recorder's cover in order to replace the batteries. I conclude that there is no evidence capable of supporting a finding of improper conduct in relation to the screwdriver incident.

(2) The donut shop incident

On December 13, 1983, the same informant was fitted with a bodypack and sent to talk to C. at C.'s residence. The resulting conversation was transmitted to VanderMeer and Kalagian seated in a cruiser parked in the area. During the conversation the informant spoke of the investigation into the shooting incident. C. said he was going to find out "what the hell is going on" and went to the telephone and called Typer at the police station and asked for a meeting with him because the police were "hassling" him for something he hadn't done. Typer agreed to meet C. at 4 p.m. at a donut shop. VanderMeer and Kalagian then drove to a beauty salon directly across the street from the donut shop with a good view of the shop. While there, VanderMeer received a telephone call from Typer. VanderMeer testified: "Typer told me that he was going to meet with C. ... He advised me that C. was his informant. He asked me if there was anything I wanted put to C. I told him at that point 'Just go and talk to him and if he has anything to say get back to me.' He never did." VanderMeer threatened to arrest Typer forthwith, and Kalagian became concerned and telephoned his superior, Inspector Swanwick, to report that VanderMeer "had gone nuts" and was alleging that Typer was a "dirty cop." Swanwick ordered Kalagian to report to him at once, and Kalagian left VanderMeer to continue the surveillance alone. Swanwick stated in evidence that Kalagian reported the events to him, and told him that he considered Typer was a very dedicated, hard-working officer. Swanwick stated that he agreed with this, and took no action.

The incident was thoroughly investigated by both OPP Project Vino and the Commission investigators, and a three-volume brief was prepared and distributed to all counsel. There is no record of what was said in the donut shop conversation between Typer and C., but both deny that there was anything improper. Typer states he was recruiting C. as an informer. No counsel requested oral evidence on these matters. On the evidence, I find no misconduct on the part of Typer.

(3) Obstructing justice

It was known that C. and G.H., the lawyer accused of laundering the cash proceeds of crime, were associates, and Sergeant VanderMeer was concerned that Typer was obstructing justice by passing police investigation information to either or both. VanderMeer voiced his suspicions to the OPP investigators during Project Vino, and they obtained wiretap authorization for C.'s telephone. On April 17, May 3 and May 10, 1985, conversations between C. and Typer were intercepted, and transcripts of the conversations were included in the 1,800-page Typer briefs distributed to counsel.

The transcripts indicated that C. was asking Typer for advice regarding C.'s complaint that someone had dumped garbage on his property. The OPP reported on their investigation as follows: "No evidence was obtained to establish or even indicate Typer did anything for C. (pseudonym substituted by me) other than suggest he let his lawyer deal with the matter. The interceptions confirmed a relationship between C. and Sergeant Typer that may be suspect but at no time could I demonstrate that Typer's conduct as a police officer was improper."

Commission staff also investigated the allegations and arrived at the same conclusion. Typer made no secret of the fact that he had a relationship with C. On June 21, 1985, he wrote the Inspector who was his superior suggesting that C., who was being sought by police, was prepared to surrender if he could make a deal on sentence in exchange for information about importers of steroids, and Typer requested that he be replaced as C.'s "informant handler" because of the rumours about his relationship with C. There was thus some notification to his superior that he was dealing with

C. as an informant. I agree with the OPP and Commission investigators that there was no evidence of impropriety on the part of Sergeant Typer in this matter.

(4) The obtaining of Mrs. C.'s address

In July 1983, C., who at that time was 25 years old, was having marital problems, which eventually resulted in a divorce. At one point prior to their separation, Mrs. C. had been driving a Ford Pinto automobile, but C. bought a 1983 Datsun ZX for her, and loaned the Pinto to the manager of his Peterborough gymnasium. Following the separation, Mrs. C. and her male friend drove to Peterborough, took possession of the Pinto and drove it to Mrs. C.'s Burlington home. C. was upset by this, and sought Typer's advice. Typer advised him that if the Datsun was really his, he had a right to retrieve it, and Typer agreed to obtain Mrs. C.'s address provided C. sent someone else to pick up the vehicle. Typer then obtained Mrs. C.'s address through connections within the Bell Telephone Company, and C. had a friend pick up the Datsun.

Some weeks later, C. had a confrontation with Mrs. C. at a mall in Burlington where she worked, as a result of which Mrs. C. laid a charge of assault which resulted in a conviction. VanderMeer told the OPP Project Vino investigators of Typer's involvement, and they questioned Typer. Typer told the OPP investigators that he did not supply the information to C. for personal reasons, but was attempting to develop him as an informant, since C. was familiar with organized crime figures who frequented his gymnasium clubs.

In January, 1987, Typer was charged under the *Police Act* with divulging information that it was his duty to keep secret, apparently on VanderMeer's complaint. An outside counsel, Frederick Leitch, was retained to prosecute the charge, and a judge fixed an August date for the hearing. On May 29, 1987, the counsel wrote Acting Chief Shoveller advising him that, although he was satisfied that Sergeant VanderMeer was sincerely convinced of Typer's guilt, the evidence was "not sufficient to draw an inference of guilt for judicial purposes" and the charge was accordingly withdrawn. As justified as that result may be, I nevertheless conclude that Typer showed very poor judgement in using his connections to obtain private information from the telephone company to assist C. in the recovery of his car, whether to help out the son of a friend or as a way of developing him as an informer.

(5) Counselling of an indictable offence

On December 16, 1983, while C. was under arrest on another matter, he was questioned by VanderMeer about his relationship with Typer. In the statement that C. gave VanderMeer and Peressotti he stated that, during the course of his domestic problems, he met Typer in the Donut Shop and asked him how he could obtain evidence that his wife was seeing another man, and Typer told him that he could get a private investigator to use both physical and electronic surveillance. He said that Typer told him that "they have ways to, whether it be by tapping phones or whatever, to be able to find out information", and Typer gave him the name of an investigator. On December 22, 1985, Corporal David Crane of the OPP interviewed C. during the OPP investigation of the allegations against Typer. Crane questioned C. about the above quotation in his statement to VanderMeer, and C. stated that "they were very pressing, suggestive, can you say this, can you say that, stop the tape, say it again" and that what really happened was that he asked Typer " would they go as far as tapping a phone" and that Typer replied "they have their ways of finding things out, and he suggested that my lawyer hire somebody to do it ... when I pressed him as to how they find out, he would never, he never ever confirmed or told me this is what they do ... that suggests that he did tell me, he never did."

Both the OPP and the Commission investigators thoroughly investigated the allegation that Typer was guilty of counselling the commission of an indictable offence, and found no evidence to support it. No counsel requested that oral evidence be called on the matter, and I conclude that there is not sufficient evidence to support a finding of misconduct.

(I) RUMOURS OF INTELLIGENCE LEAKS

Sherriff testified that at the meeting at his house with Staff Sergeant Sandelli and others on December 27, 1984, Sandelli, who was a Metropolitan Toronto Police officer assigned to the Special Enforcement Unit (SEU), told him that there was a problem about intelligence leaks within the NRPF. He stated that: "I am sure he said to me that the Niagara Regional Police Force was cut off from intelligence exchange at the high level; that they were the only force in the province at that time that was cut off." Denise Taylor testified that she had heard this rumour from a number of sources, including Pinocchio, Ronald Brady (the Police Association lawyer), Sills and Baskerville. Sills and Baskerville had heard this from the same Pinocchio whom Mrs. Taylor considered a separate source, but apparently did not mention this to her. They had placed some credence in the rumour, in spite of its source, because Sergeant Oesch of the RCMP had told them that he had heard the same rumour. This assumption that an allegation is probably true if it is heard from several sources seems to have been the foundation for most of the rumours that circulated through the Force and from there to the public, and contributed, to a large extent, to a loss of confidence in the Force on the part of a substantial segment of the public.[12] The allegation was not included in the mandate to the IIT, and was never investigated prior to the calling of this Inquiry.

The rumour was recirculated from time to time and was brought to the attention of the Commission investigators during the course of the Inquiry. The investigators found no evidence to support the allegations of intelligence leaks to criminals, and no evidence that the intelligence units of other forces hesitated to share intelligence information with the NRPF.

The SEU is a joint forces unit made up originally of selected members of the OPP, RCMP, Metropolitan Toronto Police and, since April 1990, Peel and York Regional Forces. The SEU is charged with the responsibility of investigating organized crime. Because of its proximity to the USA, where most of the organized crime families are based, the Niagara Region is of special interest to the SEU, and its members are familiar with the crime situation there. Detective Sergeant Sandelli of the Metropolitan Toronto Force, and a member of the SEU since 1979, defined "organized crime" as, "A continuing criminal conspiracy utilizing fear and corruption for profit or gain while avoiding the courts and having immunity from the law." He testified that apart from one particular incident that arose in the early 1980s, and which was later explained to his complete satisfaction, he has never had any concerns about any association between organized crime figures and any member of the NRPF, and that he knows of no "situation where there has been an association between any organized crime figure and any member of this force (the NRPF)." He described as "excellent" the relationship between the NRPF intelligence bureau and the SEU. However, he felt that there was a frequent turnover of personnel in the NRPF intelligence bureau in the past, and because it takes a long time to properly train an intelligence officer, he felt "that is not a particularly healthy situation", although there had been more stability lately.

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[12] See Recycled Rumours, p. 337.

Commission investigators interviewed a number of persons having knowledge of intelligence services in the Niagara Region, and filed a brief of transcripts of the interviews, with a copy being delivered to all counsel. None asked that the interviewees be called to give oral evidence. OPP Detective Inspector Wayne Frechette, Director of the Criminal Intelligence Services of Ontario (CISO), was interviewed. CISO is an umbrella organization for the intelligence units of 32 member police forces, including the NRPF. Inspector Frechette stated that the NRPF unit "are and continue to be members in good standing and in terms of passing information to them, criminal intelligence information, we have no hesitation whatever in passing any information to them."[13]

A high-ranking RCMP officer, whose identity was kept confidential for security reasons, stated that, contrary to headlines in the *Standard* and the *Toronto Star* to the effect that the RCMP feared leaks of information by the NRPF, he was unaware of any such fear and that the RCMP as a member of CISO has always freely exchanged intelligence information with the NRPF as a fellow member, and that he personally had worked side by side with NRPF officers without any concerns about security.

Staff Sergeant Don Delaney, commander of the RCMP Niagara detachment, stated that although he had heard "strictly rumours and vicious gossip" about NRPF information leaks, "We openly share information with the Niagara Regional Police Force ...."[14]

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[13] Statement (Oct. 19, 1989):4-5

[14] Statement (Nov. 18, 1989):7

Sergeant Donald Oesch, head of the RCMP Niagara drug unit since 1981, stated that over the years he had heard numerous rumours of NRPF involvement with organized crime, but only in generalities. For some time he had had five members of the NRPF working with him on a joint forces project, considered that it was "the best Joint Forces Operation (JFO) in the province", had high regard for the members from the NRPF with "nothing hidden from the regional police ... the day we have to do that, they won't be here."[15]

I conclude that the rumours of police information being leaked to organized crime figures by members of the NRPF, and of the reluctance of the intelligence units of other forces to exchange information with the intelligence unit of the NRPF, are untrue and were glibly repeated, revived and recycled without any effective attempt to ascertain the real facts.

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[15] Statement (Nov. 16, 1989): 15, 16

(J) SHERRIFF'S CONCERNS REGARDING WALSH AND G.H.

In the spring of 1983, VanderMeer met Stephen Sherriff, senior disciplinary counsel for the Law Society of Upper Canada, in connection with a fraud investigation VanderMeer was conducting into a scheme for laundering of drug profits involving G.H., a St. Catharines lawyer. G.H. told Sherriff that he was prepared to agree to disbarment proceedings to end the Law Society investigation, but Sherriff advised him that VanderMeer would continue the investigation and would send him to jail. G.H. stated he was not worried, that he (G.H.) had high-level contacts in the NRPF, and that, for example, he had received some award from the Force, and mentioned the name of Deputy Chief Walsh in connection with the award. G.H. said his connections in the Force would cause VanderMeer to be taken off the case. Sherriff paid little attention to the statement until he spoke to VanderMeer and was told that VanderMeer "was being effectively taken off the case." VanderMeer also told him of his concerns with respect to other NRPF investigations, and that other forces did not trust the NRPF intelligent unit. Sherriff thereupon became very concerned that there was corruption in the Force, and wrote a letter dated August 16, 1983 to Superintendent Leigh, who was Acting Deputy Chief of Operations in the absence of Deputy Chief Walsh, protesting VanderMeer's transfer from the case.

Following the meetings amongst Sergeant Sandelli of the SEU and VanderMeer and Sherriff in December, 1984 and January 1985[16] in which the same suggestion had been made, the OPP's Project Vino had investigated the matter and found no evidence of improper conduct on the part of Walsh. However, VanderMeer was not satisfied with the thoroughness of the investigation, although he had been involved in some aspects of it. Accordingly, he took Mrs. Taylor to meet Sherriff on January 8, 1987, so she could hear Sherriff's concerns "from the horse's mouth." The Walsh matter thus became one of Mrs. Taylor's concerns, and resulted in this Inquiry investigating it again at some length, and calling evidence on it.

The Inquiry evidence indicated that Staff Sergeant Chambers was VanderMeer's immediate supervisor in the summer of 1983 while VanderMeer and Constable Nicholls were investigating the G.H. matter. VanderMeer told Chambers that he and Nicholls would have to be released from other duties for six months and would require a car to carry out the investigation. Chambers was not happy since the CIB group was extremely busy, and asked that VanderMeer document the need so that Chambers could obtain approval from his superior, Inspector Gittings. Apparently frustrated by this, VanderMeer responded that Chambers didn't know what a fraud was, that he, VanderMeer, was an expert on frauds, and that if Chambers was going to deal with the investigation in that manner, he wanted no part of it. Chambers, probably also frustrated by VanderMeer's attitude, replied that that was fine with him and that he would assign the investigation to someone else. Apparently VanderMeer then told Sherriff he was being taken off the case. Upon receipt of Sherriff's letter concerning VanderMeer's "transfer," Leigh summoned Chambers to his office, where, in the presence of Gittings, Chambers explained what had happened. Gittings suggested that VanderMeer be allowed to continue the investigation, and that was done. Chambers testified that Walsh had no part in any of these events.

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[16] See p. 137.

Walsh testified that he first met G.H. in the winter of 1979 when a friend brought him to Walsh's office to invite Walsh to a B'Nai B'rith lodge meeting to accept the presentation of a trophy on behalf of the NRPF. Walsh, and four other officers and their wives attended the presentation dinner, and Walsh was the guest speaker. The trophy was presented to Walsh by G.H., and it was placed in the Force Headquarters in St. Catharines. Walsh testified that his only other contact with G.H. was during a noon work-out at the St. Catharines YMCA in the middle of January, 1980, and a 10-minute discussion with him about some legal matter on February 9, 1981. He had noted the latter meeting in his notebook, but could not recall the nature of the discussion. Since G.H. was a lawyer, and was not under investigation at that time, there would appear to be nothing sinister in Walsh's casual relationship with him, and there is nothing to indicate that Walsh was involved in the later investigation of G.H. It can be assumed that G.H.'s statement to Sherriff about his connections in the NRPF was the boasting of one at the low point of his career attempting to enhance his image in his own eyes as well as in his listener's.

I conclude that the allegation of impropriety on the part of Walsh is groundless. It is unfortunate that the Commission's resources had to be spent on this matter when it had already been investigated by the OPP and no impropriety had been found. The episode is an illustration of how many routine events were misconstrued and resulted in rumours and allegations that had little or no foundation but did untold harm to the subjects of the rumours and to the Force itself.

(K) MURRAY GAYDER SURVEILLANCE

According to the Project Vino report, during that investigation, VanderMeer and Peressotti alleged that then-Chief Gayder may have obstructed justice by interfering in an RCMP drug investigation involving one of his sons. Joyce and McMaster, the OPP officers in charge of the project, asked VanderMeer and Peressotti to obtain some documentation about the matter, but nothing to support the allegation was produced, and the matter was not pursued further due to the restrictions placed on Project Vino concerning non-disclosure of the participation of VanderMeer and Peressotti.

According to Newburgh's notebook of May 21, 1987, the IIT investigated the same allegations by questioning the RCMP officers involved and concluded that there had been no interference by Gayder.

Because of the rumours, the Commission investigators interviewed 13 RCMP officers who had participated in the drug investigation, and prepared an extensive brief. The interviews disclosed no evidence of interference by Gayder. However, at the end of the evidentiary hearings on November 20, 1990, Mr. Shoniker insisted that the brief be filed as an exhibit. He agreed that there was no indication of interference by Gayder, but, because the investigation was a joint forces effort including members of the NRPF, and the RCMP officer in charge was a friend of Gayder, he insisted: "... nobody should at this stage of the game be protected for any one reason or another. We have all been through an inquiry which has left no stone unturned ..."[17] Accordingly, the brief was filed. It discloses no impropriety on anyone's part, and I so find.

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[17] Inquiry Transcript. Vol. 229 (Nov. 1990):16

(L) ORGANIZED CRIME

Throughout the hearings, frequent reference was made, in particular by Board counsel in his statements, by Mrs. Taylor in her evidence and by some Board press releases, about the urgency of investigating the rumours of "infiltration of the Force by organized crime."

On September 14, 1989, when Gayder's counsel was examining Mrs. Taylor, he asked her to tell the Inquiry what allegations she had heard. Mr. Shoniker, acting for Mrs. Taylor and the Board, interrupted to state, "We'll learn the true meaning of eternity here in a minute if we get into the cataloguing of every allegation that was given to Mrs. Taylor of organized crime's infiltration into the police force and corruption." In a Board press release dated February 1, 1990, reference was again made to the Board's instructions to Board counsel to urge the Inquiry to get into what they claimed were the fundamental reasons for calling the Inquiry: "These are allegations of impropriety, and in particular, concerns that organized crime may have been involved, and also the manner in which such allegations have been addressed in the past."

These and other such statements resulted in considerable publicity in the media, but nothing other than these general statements was produced.

Perhaps some of the allegations referred to earlier might be very loosely characterized as being allegations of Force connections with organized crime, but they have been refuted by the evidence. No other evidence of organized crime connections was proffered by anyone, although Commission counsel repeatedly asked that any such information should be brought forward. The Commission investigators attended on the intelligence bureaus of all forces that could be expected to have knowledge of any evidence connecting NRPF officers to organized crime. None was found.

At the close of the evidentiary hearings on November 20, 1989, all counsel agreed that there was no evidence that any NRPF officer had connections to organized crime. Mr. Shoniker, speaking for the Board, stated, "If I could first address the broad sweeping allegation of organized crime's infiltration of the Niagara Regional Police Force. Every stone in that regard has been overturned, and the investigators and counsel have examined the very underbelly of various organized crime operations. Aside possibly from the leaking of information to a motorcycle gang,[18] there exists not even a scintilla of evidence that any organized crime operation has infiltrated the Niagara Regional Police Force. This is a final determination which, Your Honour, in my respectful submission, no responsible counsel can take contest with."

I have no hesitation in concluding that there is no evidence of any connection of any members of the NRPF with organized crime. Much less has there been "infiltration" of the Force by organized crime.

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[18] See John Adams and Operation Skylab, p. 165.

3 THE PROBLEM

It is apparent that there is a major problem as to the appropriate method of dealing with allegations and rumours of corruption within a police force, particularly if those allegations and rumours reach into the senior ranks of the force. Because they adversely affect public confidence in the police, they must be confronted and put to rest before repetition results in the magnification that inevitably accompanies such repetition.

As is illustrated by the attempt of the Niagara Region Police Association to have an outside police force take over the 1987 Internal Investigation from the IIT, many police officers feel uncomfortable about the possibility of preconceived ideas and even bias affecting the results when their own force members investigate allegations of corruption within their force. It is vital to the morale and efficient operation of a police force that its members have confidence in those carrying out such an investigation.

Just as important is implementing an investigative procedure that will allay the frequently expressed public concern about police forces investigating themselves, and even when an outside force is called in, about police investigating police. Whether or not that conception is justified, it is a very real one in some quarters.

What are the alternatives?

The creation of an Internal Affairs unit to deal with such matters is one solution adopted by some large forces, but that is still subject to the above objection, and is beyond the manpower resources of small forces.

Another possible solution is to refer all serious allegations to the OPP, but the problem is province wide and to take on this investigative function for all the forces in the province would probably put an intolerable strain on its present resources. As well, it would again be police investigating police.

The Ontario Civilian Commission on Police Services, established as a successor to the OPC by the *Police Services Act*, does not have the jurisdiction to investigate corruption or to lay criminal charges. In any event, police officers would be just as uncomfortable being investigated by a "civilian" commission as they are about being investigated by their own members.

Section 113 of the *Police Services Act* establishes a "special investigation unit of the Ministry of the Solicitor General," to consist of a director who shall not be a police officer or a former police officer, and investigators appointed by the Solicitor General. The "Special Investigative Unit (SIU)," as the unit is called, has jurisdiction to investigate "the circumstances of serious injuries and deaths that may have resulted from criminal offenses committed by police officers," and the director may lay charges. The SIU is concerned with violence, and there were no doubt sound policy reasons for so restricting its jurisdiction. Since its inception, it has been fully occupied with matters within its own particular jurisdiction. It is a separate unit with a specialized function, and to expand its duties into the very different area involved in the investigation of police corruption would be to dilute its objectives.

I conclude that the solution lies in an amendment to the *Police Services Act* that will create a separate unit empowered to conduct investigations into allegations that a member of an Ontario police force has engaged in corrupt practices that may amount to a criminal offence. Members of the unit should be peace officers empowered to lay criminal charges which would then be referred to the Crown Attorney for prosecution. I am well aware of the problems inherent in the selection of unit personnel who can gain the confidence of the various parties having disparate interests in the manner in which the unit operates. It is essential that the director of the unit and the investigators staffing it have extensive and recent experience in the field of criminal investigations. Otherwise, police officers will not have confidence in the unit, and the same problems that have plagued the SIU will undermine the effectiveness of the new unit. Public concern about "police investigating police" can be avoided by the careful selection of the unit personnel to ensure their fairness and impartiality. A regulation should provide that when an investigation is conducted by members of the unit, no investigator may be an ex-member of the force under investigation.

RECOMMENDATIONS

It is recommended that:

1. *Recommendation N°. 7 of the* Landmark Inquiry Report *regarding the training of medical personnel to conduct female body searches during narcotic raids be further considered.*

2. *Police personnel likely to be assigned to narcotic or similar raids be periodically updated on search and seizure operations by training exercises, seminars or other means.*

3. *Investigations into alleged police corruption be assigned to the specialized corrupt practices unit more fully described in the paragraph immediately preceding these recommendations.*

4. *(a) the investigators of complaints report back to the complainant the results of the investigation; and*

   (b) the investigators report the results of the investigation to those police agencies to whom notification of the allegations had been given, so that unfounded allegations may be cleared.

5. *Following delivery of a report of an investigation into publicized allegations against the police, the findings be made public in a meaningful way and as fully as is practical.*

PART III

FORCE MANAGEMENT

1 Amalgamation/Organization

2 The Crisis of 1987 – The Battle for Control

3 The Special Fund Investigation

4 Internal Investigation Team

5 Sergeant C. VanderMeer

6 The Call for an Inquiry

7 Role of the Board

8 Report on the next Chief

1 AMALGAMATION/ ORGANIZATION

The Commission's terms of reference include the question of whether the amalgamation of the municipal police forces in the Niagara region has resulted in a cohesive Force which functions well.

The Commission retained Dr. Richard Loreto, who had made a study of reorganization of municipal police forces in Ontario, to prepare a report on the effects of amalgamation in Niagara. His report was distributed to all participants prior to the November, 1989, workshops. At the workshops, Dr. Loreto presented his report orally, and this was followed by a discussion session. A copy of his valuable report may be obtained as indicated earlier.[1]

In considering the effects of the Niagara amalgamation it is necessary to examine the reasons for it, and some of its history.

Following World War II, many municipalities found difficulty in financing the delivery of municipal services, which were becoming increasingly sophisticated and expensive. As a result, there were numerous annexation schemes to form larger municipalities in an effort to better coordinate services, and this in turn resulted in some amalgamations of local police forces. Between 1953 and 1960, in Lincoln County alone, there were 35 municipal annexations, some small and some quite large. The largest police force amalgamations resulted from the municipal annexation involving St. Catharines and Grantham Township, and that involving Niagara Falls and Stamford Township. The provincial authorities soon realized that these piecemeal approaches, which were occurring throughout Ontario, were unsatisfactory, and they began to consider regionalization.

In late 1963, a committee was established to examine the issue for the Niagara area. It was composed of representatives from the Department of Municipal Affairs (DMA), the counties of Lincoln and Welland, the cities of St. Catharines, Niagara Falls and Welland, and the Niagara Regional Development Association, with Mel Swart, then reeve of Thorold, as chairman. The committee hired Dr. Henry Mayo, as commissioner, to do a comprehensive study of a regionalization proposal for Niagara.

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[1] See page xx.

Mayo's study clearly indicated the fragmented state of area policing as well as the resulting financial inequities. The Niagara area was policed by 15 municipal forces, as well as a county force, special constables of the Niagara Parks Commission, and the OPP. In addition to its regular duties, the OPP policed seven townships under contract, without charge. Per capita policing costs amongst the 28 municipal units in Niagara varied from nil (in the townships with OPP contracts) to $21.08 in the urban areas. Eleven of the local forces had fewer than 10 men, and six of those had fewer than five.

Police professionals from outside the area were approached for advice on amalgamation of the area police forces. The OPC proposed amalgamation of two or three adjoining forces, with the OPP to continue serving rural areas. The OPP suggested that five local forces police the urbanized eastern part of the region, with the OPP serving the westerly rural areas. Both the OPC and OPP opposed regionalization. Chief Mackey of the Metropolitan Toronto Regional Force proposed one large force serving the urban areas, with the OPP serving the rural areas.

The Mayo report was released in the fall of 1966, and recommended a two-tier municipal structure similar to Metropolitan Toronto, with policing on a regional basis.

The Ontario government enthusiastically accepted Mayo's proposals for regional government, but immediately ran into opposition from most of the local municipalities. There was little progress towards regionalization for some time, partially due to the 1967 provincial election, in which the Minister of Municipal Affairs, a supporter of regionalization, was defeated. However, his successor, Darcy McKeough, also supported regionalization. Various alternative schemes were explored, and in early 1969, DMA announced specific proposals, mostly following Mayo's recommendations. An Inter-Municipal Committee, with representatives from the four cities and two counties of the region, was appointed to work with the DMA on drawing up regionalization legislation. On the matter of policing, three options were suggested: 12 separate municipal forces; 12 municipal forces with a regional police commission; and a regional force with 12 detachments. The first option was rejected as creating "unnecessary duplication," and the second as simply being an interim step to regionalization. The third was adopted on the basis of "efficiency and cost" despite the objections of various municipalities.

The OPC proposed phasing out OPP municipal policing over three or four years, to be replaced by 73 additional regional officers to give the new force a complement of 444 which would result in the generally accepted police-population ratio of 1:750. A Regional Board of Commissioners of Police would have three provincial and two regional members. The Board would develop an interim policing plan involving amalgamation of existing forces and then, with OPC advice and approval, a master plan for complete police regionalization. The proposed transition period of three or four years was later reduced to one year.

To obtain co-operation of the various local forces, the DMA, without consulting police management, entered into an agreement with the Police Association of Ontario (PAO), acting on behalf of the Niagara Police Association, which provided various guarantees to the existing force members. These included guaranteed employment and a provision that members could not be transferred more than five miles from their former municipality without their consent.

The *Regional Municipality of Niagara Act* was passed in June, 1969, providing for regionalization to take effect on January 1, 1970. The *Act* created the Niagara Regional Board of Police Commissioners, with regional policing expected to commence on January 1, 1971. The affected municipalities raised serious concerns about cost and about the reduced planning period, with the result that the government granted the new region $750,000. to help to cover the cost of phasing out the OPP, and an annual supplementary grant of $1.50 per capita.

Nevertheless, in June, 1970, the newly-elected Niagara Regional Council passed a resolution asking the province to phase in regional policing over five years in order to relieve the "intolerable tax problem." The new Niagara Regional Board of Police Commissioners, which had been appointed in January, opposed any delay, citing figures to show that the cost of regional policing would be within reason, and that the cost of the required new communications system could be amortized over 10 years, and the cost of renovating the St. Catharines station for regional police headquarters could be offset by phasing out four other stations. The Board also pointed to potential savings from centralized purchasing, in-house printing and elimination of duplication in many areas.

The government rejected the request for a delay, but to minimize the opposition, provided additional funding for approximately 50 per cent of the most significant financial concern, the new Force's communications system.

It was also agreed that the takeover of OPP policing duties would be spread out over three years.

The chairman of the Board of Police Commissioners, Judge Donald Scott, appointed a committee to plan for the new Force. The committee consisted of Inspector James Gayder (St. Catharines), Deputy Chief Donald Harris (Niagara Falls) and Deputy Chief Martin Walsh (Welland), the second-highest ranking officers of the three largest forces. These three worked together to develop the overall organization of the Force with Harris covering the Criminal Investigation Branch, Walsh the Uniform Branch and Gayder, Records, Communication and Finance.

By the summer of 1970, the committee produced plans for a three-division, three-detachment force, the concept being that the St. Catharines Force would expand to police Lincoln County, and Welland County would be covered by the Niagara Falls and Welland forces. Personnel deployment would be on a police/population ratio of 1:750 in urban areas and 1:1000 in rural areas. The 78-page report became the master plan for the amalgamation of the 11 area municipal forces to be effective January 1, 1971.

Thus, the enormous task of planning regional policing in Niagara was undertaken by a very small group of professionals who had to also carry on their normal duties. Since this was the first regionalization of a police force in Ontario, (apart from the Metropolitan Toronto Force, which by its size and structure was quite different) the Committee had no previous model to follow, and there were no OPC studies of amalgamations to consult. The group was operating in a very limited time frame, and throughout the planning process it was subject to political pressures from a provincial government enthusiastic about the regionalization concept and anxious to see the amalgamation of the police forces within the region completed as soon as possible. Other pressures were from local municipal politicians, sceptical about regionalization and concerned about the cost of a regionalized force.

Apparently it was believed by those favouring regionalization that, despite the large number of local forces of very different sizes, experience, equipment and facilities, if they were amalgamated properly, an efficient organization would result. Niagara had no dominant force to provide the technical and management systems required for a large regional force (again quite different from Metropolitan Toronto), and new centralized support systems had to be designed and implemented. As well, the Police Association was excluded from the entire planning process, so that its input was missing. The compromises handed the association by the DMA in order to reduce its opposition to amalgamation, guaranteeing job security to all members regardless of qualification, did not add to the efficiency of the new Force. The restriction on transfers tended to preserve parochial interests, and delayed integration.

Dr. Loreto interviewed a number of senior officers who were serving on the Force at the time of amalgamation. He identified several aspects that were viewed as inadequate: insufficient time for planning, insufficient communication between the planners and lower ranks, poor quality advice from the OPC, and insufficient funding.

The organizational structure approved by the Board provided for a Deputy Chief — Operations and a Deputy Chief — Administration. Administration included Services (Records and Communications) and Staff (Property and Personnel), and was housed in the St. Catharines Headquarters with the Deputy Chief — Administration. Also in Headquarters was the Chief and his staff, and the Deputy Chief — Operations with his staff and the Intelligence and Tactical Units. Operations in the field were organized geographically, with a division in each of the three major cities and detachments in the smaller centres. Operations was divided into Uniform and CIB, and each division set up specialized units in these areas. This structure remained unchanged until 1976, when an additional CIB unit was created at headquarters.

Albert Shennan, the first Chief of the new Force, retired in 1977 and was succeeded by Donald Harris. Harris made major changes in the organizational structure. He appointed an executive assistant to the Chief. The Intelligence Unit was given to Operations as well as two units, Support Services and a Complaint Bureau. The Fraud and Youth Units were eliminated in the Divisions. Planning and Research was placed under Administration. A new Unit, Financial Functions, was set up as a separate branch, and Records and Property functions were established in the field units as well as centrally. Later, further changes were made: Intelligence, and Planning and Research were combined and renamed Operational Planning, reporting directly to the Chief, Headquarters Operations was created, and the Thorold detachment was replaced by a storefront facility, resulting in considerable criticism from Thorold council.

Harris retired at the end of 1983, and Gayder took over as Chief on January 1, 1984. He eliminated the position of Deputy Chief — Administration, and increased specialization and centralization of Headquarters

Operations, which he renamed Operations Services. He established a new Press-Media Public Relations Unit, and Planning and Research was removed from Administration and reported to the Chief through his Executive Officer. In 1985 the office of Deputy Chief – Administration was restored, and Planning and Research and a new Audit Unit reported to the Chief through a new position of Inspector, Management Services.

Specialization in Operations increased at Headquarters under a Superintendent, Operations, and in the divisions through the revival of Fraud and Youth Units. New Units of Break-and-Enter, Victims Services and Traffic Investigation were created.

In 1987, Shoveller became Chief, and he introduced significant changes. Administration was divided between the Deputy Chief – Support Services (formerly Deputy Chief – Administration) and a new civilian Chief Administrative Officer, who took over a reorganized Administrative Services Unit. Management Services was eliminated, and Planning and Research and Audit reported to the Chief through the Executive Officer. Detachments became sub-divisions under a staff sergeant instead of an inspector. Identification Services were centralized within Field Operations (formerly called Operations Services).

Thus, the structure of the new Force was gradually transformed from its original rather loose affiliation of the three largest municipal forces, which had absorbed the smaller forces in their area, into a more regional organization with increased centralized and specialized functions. By 1992, the Force's overall strength had increased by over 80 per cent from 453 to 822 (civilian personnel increased from 55 to 230; police officers increased from 398 to 592). Centralization and civilization have resulted in an increase in personnel assigned to headquarters at the expense of the Divisions. The percentage of personnel at headquarters has increased from 15.7 per cent in 1971 to 35.8 per cent in 1992, whereas Division 1 decreased from 30.5 per cent to 27.5 per cent, Division 2 decreased from 27.2 per cent to 18.6 per cent, and Division 3 from 26.7 per cent to 15.8 per cent.

To assess the success of the Niagara amalgamation requires an examination of not only the managerial philosophies, policies and procedures, but also of its internal relationships and communications systems. The Commission's terms of reference also inquire about internal communications.

Good vertical and horizontal intercommunications are essential. In the NRPF these appear to be similar to those in comparable forces. The Chief has a daily morning meeting with the two Deputy Chiefs and the CAO. A bi-weekly staff meeting is held with the Deputy Chiefs, CAO, divisional commanders and the Chief's Executive Officer. The Chief and Deputy Chiefs attend the meetings of the Police Services Board. There is a monthly operational staff meeting of the Deputy Chief – Field Operations, divisional commanders, duty officers and the Chief's Executive Officer. There are informal monthly meetings of the Policy and Procedures Review Committee, consisting of the two Deputy Chiefs, the CAO and the Chief's Executive Officer, and there are periodic divisional meetings and subdivision meetings convened by divisional and branch commanders.

Communications between uniformed and CIB personnel in police forces are often rather strained. Uniformed officers tend to consider their fellow officers in specialized plainclothes units as being somewhat elitist and remote. In the NRPF, an attempt has been made, with some success, to minimize this by attending at each other's briefings and rotating uniformed staff into the CIB unit. It is important that measures to increase mutual understanding and co-operation be continued and expanded.

While centralization and specialization increase expertise and performance, they may also lead to elitism and poor communications. During the first 10 years of its existence, the NRPF was very decentralized with specialized units such as Fraud and Youth at the divisional level, and with little automation it was difficult to communicate and function efficiently. During its second decade, there were great changes in the Force's administrative side, with increased centralization, specialization and civilianization. More recently, there has been considerable improvement in computerization and records management with the 1988 implementation of the On-Line Records Access Computer For Law Enforcement (ORACLE) system. As well, more attention is being paid to delivery of services by the administrative side of the Force, in an effort to be responsive to the policing needs of the many communities in this large region. The Force's divisional boundaries and patrol districts have been tailored to coincide, as much as possible, with the boundaries of the individual municipalities. A district-policing concept has been designed with the intention of familiarizing patrol officers with their assigned areas, with use of foot patrols to increase contact with the community. This should be further developed into the community-based approach required by the *Police Services Act 1990*.

In the past few years there has been a movement toward a return to the police/community partnership concept that existed before cruiser patrols and automation replaced the more intimate relationship between the public and the neighbourhood police officer. This community-based policing is the concept called for by the *Police Services Act, 1990*. It is now generally accepted amongst policing authorities that community-based policing provides the best chance of successfully meeting the challenges of the 1990s.

In the past, the management system of the NRPF has not included strategic planning to critically analyze the Force's operations and facilities, with a view to identifying changes necessary to improve its efficiency. Since 1977, it has had a Planning Unit, and in recent years the Unit has acquired university-educated staff and has produced high-quality reports, but they have tended to react to perceived problems rather than to plan for the future. However, late in 1991, the Deputy Chief – Field Operations, commenced a strategic planning operation to examine all aspects of delivery of services to the public. In December 1991, it issued a report entitled "*Policing in Niagara – Planning for the Nineties*" which contains ambitious and far-ranging proposals for the future. These plans quite properly include community-based policing.

I conclude that amalgamation of the municipal forces which now constitute the NRPF did not, in its early stages, result in a cohesive organization. This was due to several factors. The enthusiasm of the provincial government for regional government, and its belief that amalgamation of local police forces was the catalyst that would lead to municipal regionalization, led it to set a police amalgamation deadline that did not allow for adequate planning. Unlike the only previous police amalgamation, that of Metropolitan Toronto, there was no dominant police force with the proper technical and administration systems to provide a base for the management of the new Force. The formidable task of planning for the new Force was turned over to a small group of professionals, without experience in a large force, working on a part-time basis while carrying on their other duties, who had no previous model to follow, who had no studies of the local municipal forces to refer to, and who did not receive adequate input and assistance from the OPC. The 11 forces to be integrated were of disparate sizes, ranging in membership from five to 134, with different training, experience, equipment and facilities. Generally speaking, the members of the various forces were unenthusiastic about an amalgamation in which they felt they would lose their identity and they were conscious of the fact that the Ontario Police Association (OPA), which represented them, opposed the measure. Integration was greatly inhibited by the OPA's success in obtaining legislation guaranteeing job security regardless of qualification, and preventing the non-consensual transfer of any Force member more than five miles from the member's former location.

It is interesting to note that counsel for the Association in his submission to the Inquiry suggested that an orderly rotation through the major detachments of the NRPF early in a constable's career would be beneficial to the constable and the Force. I concur.

Attrition has reduced the parochialism that at first caused members of the old municipal forces to withhold loyalty to the larger amalgamated Force. Over the years, many of the problems mentioned have been eliminated or at least diminished. With a new Chief who has a reputation for innovation and planning for the future, the question in the terms of reference as to whether amalgamation has resulted in a cohesive police organization that efficiently renders a service to the public may now be answered in the affirmative.

RECOMMENDATIONS

It is recommended that:

1. *Planning for amalgamation of municipal police forces should recognize the diverse interests and backgrounds of the forces involved. Outside expertise from the academic, business and public sectors should be made available to police personnel organized in study teams. Planning for the new Force's human resources should be given as much attention as its structure and management.*

2. *The management pattern in the NRPF, developed during its formative years, now needs an innovative management philosophy to meet the changes in public attitudes that have occurred in the past 20 years. This should include an interest in seeking fresh ideas, interaction with other ranks, visible leadership and improved relations between the Police Association and management, between the Board and management, and between the Force and the public.*

3. *An improved internal review system reporting to the Chief at regular intervals should be established to ensure that internal problems are resolved before they become critical.*

4. *Consideration should be given to seconding police personnel for short periods to other forces, and to rotating them amongst other divisions within the NRPF, as part of career development and to counteract any tendency toward allegiances to a division rather than to the Force as a whole.*

5. *Increased centralization within the Force should not be allowed to interfere with increased community-based policing.*

2 THE CRISIS OF EARLY 1987 – THE BATTLE FOR CONTROL

In January 1986, three new members of the Board were appointed by the province. They were Denise Taylor, Robert Hanrahan and Robert Keighan. They joined William Dickson and Robert Saracino, both of whom had been appointed by the Region. The Board elected William Dickson as chairman, and Mrs. Taylor as vice-chairman.

Mrs. Taylor had heard rumours of problems within the Force, and took her appointment very seriously. She had no background in policing matters, apart from what she had learned as a St. Catharines council member. Although the Municipal Police Authorities (the umbrella association of Ontario Boards of Police Commissioners) offered information programs for new commissioners, she did not attend these, but did take steps to educate herself about the workings of the Niagara Force. She met with a number of political and legal figures in the area and obtained their views about the state of the Force, and went on personal inspection tours of the Force's operations and facilities. Superintendent James Moody was assigned to arrange these tours and conducted some of them. Almost from the start, she heard rumours of misconduct by members of the Force.

Mrs. Taylor's approach to her duties and her views on the way the Board meetings should be conducted soon led to friction amongst Board members. She actively pursued a policy of "openness and accountability" which clashed with the existing procedures for the handling of Board business. Her aggressive style, together with her willingness to seek assistance from the media which was always pressing for more openness, soon resulted in confrontations at Board meetings. In her notes, she referred to past Niagara Police Boards as being "Old Boys Clubs."

Throughout the spring of 1986, Mrs. Taylor continued to question community members about the Force. William Reed, a prominent criminal lawyer, told her about factions in the Force which were suspicious of each other in relation to "office politics, promotions, and assignments and transfers, and things of that nature."[1] He referred to the Harris or Niagara Falls faction which he identified as including Harris, Shoveller, Moody, and Leigh and the Gayder or St. Catharines faction which included Gayder, Parkhouse, Gittings and Swanwick. He also told her of rumours that the Force sometimes conducted unauthorized wiretaps, and that senior members of the Force took police vehicles home. That spring, Mrs. Taylor approached Constable Jacklyn Davey about her work relating to domestic violence. Staff Sergeant Peter Gill, Davey's supervisor, questioned Davey about the nature of her discussion with Mrs. Taylor, and Chief Gayder later spoke to Mrs. Taylor and told her she should not meet with officers without his prior approval. Mrs. Taylor referred to this as one of the causes of the deterioration of her relationship with Gayder. In her evidence, she states she was unaware that a bulletin of the Municipal Police Authorities warns that such meetings are improper.

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[1] Inquiry transcript (Public), vol. 141 (Jan. 11, 1990):70.

In the spring or early summer of 1986, Mrs. Taylor met with Sergeant James Baskerville, the Court Officer, to tour the court facilities and learn about court procedure. Thereafter, they continued to have "quite a few meetings" throughout 1986, but it apparently was not until later in the year that Baskerville told her of the various rumours he had heard.

In July of 1986, Mrs. Taylor asked Gayder to reopen the investigation into the Lorenzen matter, and Gayder said he would check with the Crown and report back to the Board. Before he could do so, the day following her request, Mrs. Taylor, in an interview on CBC Radio announced she was asking that the investigation be reopened. This caused further friction between Mrs. Taylor and other Board members and the Chief.

During the summer of 1986, a dispute arose between Gayder and the new Board concerning Mrs. Parnell's salary. Gayder's position was that the previous Board had undertaken to raise her salary in 1986, but the current Board was unwilling to do so, and some members felt it was improper for Gayder to be lobbying them on the subject. Mrs. Taylor testified that this also contributed to the breakdown of her relationship with Gayder.

In August, 1986, the *Standard* published an article alleging rampant nepotism in the NRPF. At that time, the Force was in the midst of another hiring session and one of the applicants was Gayder's son. When Gayder appeared to be pressing for his son's acceptance at the December 22 Monitoring Committee meeting, a further confrontation developed between Gayder and Mrs. Taylor.[2]

On August 7, Mal Woodhouse, a regional councillor, presented a notice of motion to the Council calling for a public inquiry into the NRPF, citing a number of allegations, including the McAuliffe wiretap allegations, the nepotism articles, and the Lorenzen gun allegations. The motion itself was not brought on for several weeks while a package of supporting material was circulated. This included a copy of the 1984 OPC Investigation press release Woodhouse had received from Mrs. Taylor, eight news articles calling for an inquiry, an October 1985 news article about VanderMeer's problems with C., the nepotism article, an October 8, 1985, memo from Bob Rae, the leader of the Opposition, to Premier Peterson about an NRPF inquiry, and two letters from MPP Mel Swart outlining complaints about the Force. Mrs. Taylor did not encourage the call for an inquiry at that time, considering that it was premature. When the motion came before the Regional Council, it was defeated.

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[2] See p. 7.

Sometime in early September, Mrs. Taylor met again with Baskerville. Mrs. Taylor stated in her will-say that Baskerville said "I'm going to tell you everything now." They discussed possible wrongdoing in the Force, and allegations of corruption at senior levels. Gayder, guns, DeMarco, and officers' purchase of Force vehicles were mentioned. He told her of his suspicions that a suicide gun had disappeared, and that when he had asked about it, he was advised the Chief's office was involved, and not to inquire further. He also advised her not to go to "Toronto" with her suspicions, as she had suggested, because "you can't trust people in Toronto" and the word would get back to the NRPF. He gave her Pinocchio's real name, and intimated Pinocchio could give her more information. Baskerville testified that, apart from rumours he heard from other police officers, his one identifiable source of information was Pinocchio, and that he told Mrs. Taylor that his information was "the rankest form of hearsay." Mrs. Taylor, on the other hand, states that Baskerville told her "I was there, I'm telling you it's true," and she considered that this was a significant new development because for the first time she was getting "first hand" information. She came away from the meeting convinced that there were serious problems in the Force.

Gayder testified that in the early fall he received an official complaint from the administrator of the Police Association concerning Mrs. Taylor meeting with police officers without directions from the Chief's office, and that he spoke to Mrs. Taylor about this several times, but she ignored it. He then spoke to Mr. Dickson, the Board chairman, who contacted the OPC and asked them to send a representative to the next Board meeting to outline the duties and responsibilities of police commissioners. As a result, on September 11, 1986, John McBeth and Stan Raike of the OPC attended a Board meeting. During the discussion of a commissioner's responsibilities, in answer to a question as to what would happen to someone who refused to follow the guidelines, Mr. McBeth made a remark about the possibility of the Minister not reappointing them. Mrs. Taylor took the remark to be aimed at her. Mr. McBeth was to be called as a witness, but died before he was able to testify. Mr. Raike testified that someone (he thought it was Mrs. Taylor) asked the question, and that Mr. McBeth had replied in a "lighthearted, jovial" manner that he supposed that member "might not be reappointed when their time ran out." Although there is no evidence that Gayder was connected with the statement, Mrs. Taylor recorded in her notes that this was a very serious attempt to intimidate her, and that Gayder was involved. Similarly, she recorded an incident at a meeting when "the Chief came up behind me and then leaned over me and said in a very low voice, 'So you were berry picking yesterday,' and when she agreed she had been, he said, 'Yes, I have spies out there.' " She said she felt this was "a subtle attempt to try to intimidate me."[3] There is no doubt that these incidents further alienated her from Gayder.

On September 29 and October 2, 1986, Mrs. Taylor accompanied Constable William Gill on his cruiser patrol. Mrs. Taylor states that on the second trip, she asked Gill if he had heard anything about undercover investigations of infiltration of the Force by organized crime, and that he "screeched his cruiser to a stop," and pulled into the 7 Eleven parking lot. He ordered her out of the cruiser and took her to the rear and said to her: "Lady ... if you don't stop asking the questions you're asking around here, some night I'm going to find you in an alley, dead. Now get back in the cruiser." Gill's evidence was that, being distracted by her questions, he had to slam on his brakes to avoid another car. He told her he was not interested, he was just supposed to drive her around, and if she kept on asking questions, he would return to the station. He then pulled into the 7 Eleven parking lot to get soft drinks. While standing outside drinking pop, Mrs. Taylor said she thought she was being followed, and he told her that if she was followed, she should stay out of alleys, otherwise she would get killed and he "would have to come in there to get her." Whatever was actually said, it is apparent that Mrs. Taylor felt she was being warned to stop asking questions. In a will-say she prepared for VanderMeer in April 1987, she stated: "By October 1986, I was being warned by numerous people that my life was in all likelihood in danger."

Mrs. Taylor testified that, early in the fall of 1986, she began having periodic informative discussions with Deputy Chief Shoveller, and that Gayder appeared to resent this. However, when he remonstrated with her and said it was damaging morale, she insisted that she be allowed to continue the meetings, and he reluctantly agreed.

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[3] Will-say (April 6, 1987):10.

Mrs. Taylor's husband, a medical doctor, also received a warning from a patient that Mrs. Taylor's safety might be endangered. On October 14, 1986, Mrs. Taylor approached Reed, the lawyer who had earlier told her about the factions in the Force, and advised him she felt her life was in danger. He recommended that she meet Sergeant VanderMeer, and offered to arrange a meeting. On October 17, Mrs. Taylor met VanderMeer and Constable Thomas Prentice, and she related the allegations she had received about the Force and her own safety. She understood VanderMeer would be investigating her concerns, and thereafter met with him at her home every two weeks or so to share information they were each receiving.

Sometime in October, VanderMeer and Onich approached CIB Inspector Peter Kelly concerning the rumoured existence of a closet containing seized guns located near Gayder's office. VanderMeer suspected they were stolen from the Force and suggested they take steps to get into the closet, but apparently the matter went no further at that time.

On October 22, Mrs. Taylor met Gerry McAuliffe in Toronto. They discussed Gayder and his guns, Shoveller's merits, Baskerville's concerns, the McBeth incident, and illegal wiretaps. According to Mrs. Taylor's notes, McAuliffe warned her to be careful of VanderMeer: "watch him — dangerous — jumps to conclusions." She testified that VanderMeer had similarly warned her about trusting McAuliffe.

Also on October 22, Mrs. Parnell reported to the regular senior officers meeting a complaint from Mrs. Ellis about her dissatisfaction with the way the Force was handling her complaints against her husband, the Force mechanic. Mrs. Ellis had threatened to go to the media about her husband's doing repairs to senior officers' private vehicles in the Force garage unless her complaints were resolved. Gayder assigned the matter to the Complaints Bureau for investigation, but Shoveller left the meeting with the impression that he, as Deputy Chief, Administration, was to follow up on the matter. The investigation he launched is described below.[4]

Mrs. Taylor had talked to Jim Bradley, a local MPP, on earlier occasions about her concerns, and in late October she returned to him and told him she was getting serious allegations about the Force, and "didn't know where to turn." He agreed to set up a meeting with the Solicitor General.

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[4] See p. 223.

In early November, Mrs. Taylor met Pinocchio through her husband. Pinocchio had been mentioned by Baskerville as a source of information. Mrs. Taylor was not aware of Pinocchio's reputation for lack of credibility, and his allegations increased her concern about corruption in the Force. She arranged a meeting between Pinocchio and a *Standard* reporter, to whom Pinocchio repeated his allegations. She and VanderMeer met Pinocchio again in late November, and VanderMeer suggested that Pinocchio should meet Peter Moon. This meeting did not take place until January.

On November 2, 1986, Mrs. Taylor discussed with her neighbour, John Crossingham, her problems with Gayder, and his allowing senior officers to use police cars for private purposes. Her notes make it clear that there was a serious breakdown in her relationship with Gayder; that she considered he had lied to the Board, and that she was considering "actions under *Police Act*." She confronted Gayder with the issue of the police cars at a Board meeting, and Mrs. Taylor's notes indicate she stated: "... if I hear of other similar situations, I personally will view them as a serious breach of duty." At the same meeting, Gayder complained of the way Mrs. Taylor had dealt with the need for new typewriters in various areas of the Force, and that she had obtained information directly from Force personnel, and raised the issue at the Board meeting without first speaking to Gayder on his return from a short absence.

On November 7, 1986, a Routine Order was issued, over Gayder's signature, for the transfer of 14 officers. One of these was Inspector Kelly, head of the St. Catharines CIB, and rumours circulated that his transfer had been engineered by Mrs. Parnell, Gayder's secretary.[5] Kelly's replacement was Inspector Bruce Chambers. VanderMeer was very unhappy about Chambers, and expressed his feelings freely throughout the department.[6]

On November 16, 1986, Mrs. Taylor made a note: "phones tapped? – last month – clicking noises on my line." She also noted that Mal Woodhouse had the same problem. At the December 4 Board meeting, the OPP report, finding no evidence of illegal wiretaps by the Force, was provided to the Board. At the same meeting, Gayder requested that the Board do its annual audit of the Special Account for which he was a signing officer. Mrs. Taylor and Mr. Dickson were designated to conduct an audit on December 11. Mrs. Taylor later cancelled the appointment and never rescheduled it.

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[5] See p. 170.

[6] See p. 183.

Another incident that caused Mrs. Taylor further concern about the Force occurred on the day before Christmas, and it was investigated by the Commission investigators. On the afternoon of December 24, Pinocchio and his wife were passengers on a local bus going to Lincoln Mall. An altercation took place between Pinocchio and another male person with an extensive criminal record, and Pinocchio concluded his life had been threatened. He telephoned the NRPF from the mall, and the officer in charge offered to send a patrol car, but Pinocchio said he and his wife wanted to complete their Christmas shopping and would be home by 9 p.m. It is possible that the dispatcher who took the call, and who was familiar with Pinocchio's reputation for credibility, did not sound too impressed about the death threat, because Pinocchio then phoned Mrs. Taylor to complain. Mrs. Taylor's evidence is that she phoned Staff Sergeant Hill, who was the dispatcher's supervisor, to complain of inaction, and was told that in these cases one has to assess the credibility of the complainant. Mrs. Taylor was very upset by this, and said she would be speaking to a more senior officer. Shortly after nine that night, a police officer went to Pinocchio's home to interview him, and later the dispatcher, the staff sergeant and the alleged threatener were interviewed, and it was concluded that no action should be taken. Neither Pinocchio nor Mrs. Taylor felt the matter had been properly handled. Mrs. Taylor consulted VanderMeer and Moody about the incident. Hill complained to the Police Association about the way he had been treated by Mrs. Taylor.

On December 22, 1986, the Monitoring Committee meeting described in Part I of this report marked the beginning of what was probably the most critical period in the history of the NRPF. The facts and evidence concerning what followed that meeting have been set out in Part I. Running parallel to those events was VanderMeer's investigation of the Force garage. When Mrs. Ellis's complaint about her husband doing private work on senior officers' cars came up at the October 1986 Board meeting, Gayder assigned it to the Complaints Unit. However, Shoveller, as Deputy Chief Administration, considered it fell within his jurisdiction, and went to talk to Sergeant Locke, who was in charge of the garage.

Shoveller learned about Mrs. Parnell's paint job[7] when he asked Locke about garage work done for senior officers. Locke delivered the Checkpoint invoice for the paint job to Shoveller by mid-November, which stated it had been "paid by cheque," and Shoveller states that he was then satisfied that Mrs. Parnell had paid for the work. He testified that he nevertheless wanted the whole matter of private repairs looked into, and in early December asked VanderMeer to investigate, and gave him the names of Superintendent Swanwick and Mrs. Parnell as examples of private work being done by Ellis, the Force mechanic.

There was some confusion in the evidence as to what names were mentioned, but whatever was said, it was evident that it was the Parnell paint job that was the subject of VanderMeer's investigation. It would seem that what was uppermost in many minds was the possible involvement of Gayder in arrangements for the repair of his secretary's car in the Force garage at Force expense, rather than an investigation of the garage operation in general. The only written report was a memo which VanderMeer delivered to Shoveller on January 10, and this dealt exclusively with the Parnell paint job. VanderMeer's notes state that he was still pursuing a "possible fraud." It was apparent that they did not want knowledge of the investigation to come to Gayder.

On January 5, 1987, Shoveller returned from vacation and raised a concern about the hiring process in which Gayder's son was included, followed by the confusing meetings in this regard which have already been described.[8]

On January 13, VanderMeer telephoned the Royal Bank Headquarters in Toronto to check the source of the funds for the paint job, mentioning Mrs. Parnell's name and stating he was conducting a "strictly secret" investigation of her. The Royal was not Parnell's bank, but it was the bank used by the Force Special Fund for which Gayder was the signatory. Although Shoveller stated he was satisfied by the production of the Checkpoint invoice that Parnell had paid for the paint job, VanderMeer testified that Shoveller had mentioned the Special Fund as one of the possible sources of the paint job payment.

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[7] See p. 90.

[8] See p. 7.

On January 16, Gayder, having been told about the Royal Bank inquiry, asked Deputy Chiefs Shoveller and Parkhouse whether they had any knowledge of VanderMeer's secret investigation of Parnell. Both denied it. Gayder ordered Inspector Marriott, his executive officer, and Sergeant McGloin, the head of the Complaints Unit, to find out the reason behind VanderMeer's investigation. VanderMeer told them Shoveller was involved. On January 21, Marriott and McGloin interviewed Shoveller, who stated he had ordered VanderMeer to investigate repairs of private vehicles in the Force garage. He stated that the instructions were given "within the last month" as a result of Mrs. Ellis's allegations brought up at the October senior officers meeting, and Gayder's instructions to investigate them. He was not aware that Gayder had assigned the investigation to the Complaints unit on October 22. On January 22, Gayder sent Shoveller a memo referring to a phone conversation concerning a misunderstanding of Gayder's instructions, and asking for a detailed report "regarding all persons that have been the subject of Sergeant VanderMeer's enquiries." Shoveller replied on January 30, 1987, with a three-page memo, the tone of which was rather disrespectful and indicated considerable discord between the Chief and his Deputy. It was on the morning of January 30 that Shoveller met VanderMeer and Mrs. Taylor and *Police Act* charges against Gayder were discussed.

On January 8, 1987, Mrs. Taylor was elected Board chairman. She had read the Peter Moon article with interest, and that night VanderMeer took her to meet Stephen Sherriff, "so she could hear it from the horse's mouth." Moon had learned of many of the allegations mentioned in the *Globe and Mail* article from Sherriff. The first matter discussed was her concerns about the John Gayder hiring matter. Sherriff told her it might amount to corrupt practice under the *Police Act*, and then turned to his concerns about the Force. Mrs. Taylor's notes of the discussion indicate she was inquiring about further incidents of impropriety involving Gayder, and that she would speak to Shoveller in that regard. Her notes conclude with the words, "Feel stymied – need help – ... I turned to the media as never before."

Shortly thereafter, VanderMeer arranged for Moon to meet Mrs. Taylor at her home. Mrs. Taylor expressed concern that Gayder might be a criminal with respect to guns. Moon testified: "And she didn't want him to be Chief of Police ... She didn't feel he was an appropriate Chief because of his involvement with weapons and that he wasn't necessarily the administrator that she wanted in charge of the Force." A further meeting took place at the St. Catharines Holiday Inn, with Mrs. Taylor, VanderMeer, Moon, and Pinocchio present. Allegations of corruption in the Force were discussed, and Pinocchio related various vague allegations against NRPF members. Neither Moon nor VanderMeer "put much stock" in Pinocchio's allegations and believe they told Mrs. Taylor so, but she does not recall this.

On January 15, Mrs. Taylor went to see the Solicitor General and told him of her concerns, including the attempts to intimidate her, and the problem that she could not pass the information to the Board because "I concluded they could not be trusted with the information at this point," nor to the Chief because "He had lied to me."

On January 16, at the morning meeting of senior officers, the problems between VanderMeer and Chambers were discussed, and Parkhouse recommended VanderMeer's transfer to the Niagara Falls detachment. A Routine Order for the transfer was issued January 16, effective January 26. On January 19, Assistant Crown Attorney Andrew Bell telephoned Mrs. Taylor to express his concern about the transfer. On her suggestion, he wrote Gayder with a copy to the Board. In her first draft of her will-say prepared for the IIT, Mrs. Taylor's states: "... conditions deteriorated very rapidly, at this point of time, within the Police Force. Sergeant VanderMeer was given notice that he was to be transferred to the Falls, it appeared, and Deputy Shoveller told me of the situation that was developing with respect to the investigation of Mrs. Parnell and of the fact that ... the Chief of Police was attempting to intervene in that investigation, and of his grave concerns with respect to that matter."[9]

On January 26, Gayder again spoke to Mrs. Taylor about her frequent meetings with Shoveller, and shortly after spoke to Shoveller. Shoveller explained that there was little he could do when approached by a Board member unless directly ordered not to speak to her. Gayder did not give any explicit order, and in spite of Gayder's obvious displeasure, the meetings continued.

On January 27, Staff Sergeant Newburgh told Shoveller he suspected his telephone had been tapped, and Shoveller suggested he speak to Mrs. Taylor. Newburgh suspected that Gayder was involved, and as already noted, Mrs. Taylor had also had suspicions of wiretaps. Her conversation with Newburgh added fuel to the fire that was damaging the relationships amongst those responsible for the administration of the Force. Mrs. Taylor's notes of a meeting that day with her neighbour, John Crossingham, include: "what did Waterloo do wrong," "develop *Police Act* charges — Shoveller, Andrew Bell," "must develop nepotism issue," "puts guns in own name rather than destroying them," "N.B. Lying makes it very serious." "Waterloo" presumably refers to the very serious problems the Waterloo County Board encountered when it ended up with two police Chiefs, after it fired its Chief, hired another, and, when the former Chief successfully challenged the manner in which he had been fired, was ordered by a court to reinstate the original Chief. It is apparent that by this time Mrs. Taylor had decided to get rid of Gayder.

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[9] Will-say (April 6, 1987):23.

In her first will-say, prepared at VanderMeer's request, Mrs. Taylor stated: "I then determined that it was essential to remove the Chief of Police from office, even temporarily, in order for a thorough — — in order for the interference that was taking place to be put to a halt, and in order for officers to be able to investigate freely allegations surrounding both the Chief of Police and other members of the Police Force without interference."[10]

On the morning of January 30, Shoveller and VanderMeer met with Mrs. Taylor at her home and Mrs. Taylor discussed laying *Police Act* charges against Gayder relating to the hiring events. Shoveller advised Mrs. Taylor to first confront Gayder with the allegations and give him an opportunity to explain before laying charges, but she did not do so.

On January 31, Mrs. Taylor met Crossingham and William Dunlop, a lawyer familiar with the *Police Act* whom Crossingham had recommended. She told Dunlop of her concerns, and that she felt there were sufficient grounds to charge Gayder. She testified that he confirmed that view, and that she relied entirely on Dunlop who persuaded her that she had a moral obligation to lay charges.

On February 3, Gayder met with Schultz of the OPC regarding his problems with Mrs. Taylor, and Schultz said he would speak to the OPC chairman with a view to arranging a hearing under section 58 of the *Police Act* which gave the Commission power to investigate the administration of a police force. Gayder was suspended before any such investigation was arranged.

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[10] Will-say (April 6, 1987):23-24.

The "crisis" culminated on February 5 with Gayder's suspension. The Board met that morning, in accordance with Gayder's request for a special Board meeting to "clear the air," and Gayder gave a long presentation about the hiring process and what had transpired at the recent hiring sessions. He was not questioned, and the Board withdrew and met in private with Dunlop. Mrs Taylor told the other members of her intention to lay charges against the Chief, and Dunlop advised them that, once the charges were laid, it was their duty to suspend Gayder as Chief.

The events already described in Part I of this report culminating in Gayder's suspension, followed.

On February 23, Dunlop, the Board's lawyer, spoke to Ian Roland, Gayder's lawyer, and informed him that there was going to be a "host of allegations" against Gayder, and that, even if the charges were dismissed, the Board would not permit him to return to active duty. There was a discussion of the above-mentioned problems that plagued the Waterloo Regional Force over its firing of its Chief. Possible settlement based on Gayder's retirement on pension was discussed.

A number of new charges against Gayder were drafted, and Gayder's evidence is that, faced with the cost and strain of defending them, he took early retirement.

Mrs. Taylor had emerged from the power struggle as the victor. It is apparent that the hiring charges were a means to an end; that is, to remove Gayder from control so that her other suspicions could be investiigated, with the expectation that evidence to support real charges, such as theft and breach of trust, would result. These would have retroactively justified Gayder's suspension, followed by his anticipated resignation when faced with the charges, and this would avoid the problems encountered by the Waterloo Board over firing their Chief.

I am satisfied Mrs. Taylor sincerely believed James Gayder was dishonest and that it was her duty to see that he was removed as Chief. By establishing herself as the "lightning rod" for complaints, rumours and allegations almost immediately following her appointment to the Board, she was soon convinced that there was something fundamentally wrong with the Force, and that since no one was doing anything about it, it was up to her to see that it was fixed. Her inexperience in such matters, and her lack of appreciation of the unreliability of "barrack room rumours" led her into actions that damaged the reputation of the Force. It was improper for the

Board chairman to meet privately with Force and non-Force members about rumours and allegations. These witnesses should have been referred to the Chief. If the allegations were of wrongdoing by the Chief, the Board should have been advised, and the allegations should have been referred to the OPC for investigation. (In the future, when my recommendation at the end of Part II for establishment of a provincial unit for such investigations is implemented, the reference would be to that unit.) Further, it was fundamentally wrong for a member of the Board, and particularly for the chairman, to be meeting with Force members in clandestine discussions aimed at displacing the Chief. Having VanderMeer present was bad enough. It was made more so by requesting the Deputy Chief, the Chief's assistant and potential successor, to be present to take part in discussions about laying charges against the Chief. Regardless of her mistrust of the Board, if Mrs. Taylor thought there were grounds for dismissing the Chief, an *in camera* Board meeting was the only place the matter should have been discussed, and that was the only forum that could legally take any required action. As well, there was no great urgency about suspending Gayder, and it was improper and unfair for Mrs. Taylor to rush through a matter as critical as the suspension of a Chief while one of the Board members, considered to be a supporter of that Chief, was absent on vacation.

Shoveller's role, as Deputy Chief, was also improper. A Deputy Chief should not be meeting with a junior officer and a member of the Board of Police Commissioners, at the Board member's home, in discussions that undermine the authority of his Chief. He should have made it clear to Mrs. Taylor that such discussions were improper, and should have ordered VanderMeer to have no further discussions with Mrs. Taylor about Force investigations, including the Parnell matter. In addition, of course, as the one most likely to benefit from Gayder's departure, his participation in those discussions was self-serving. Having raised the question of Gayder's son being improperly on the list for the January hiring interviews, and having suggested that VanderMeer should investigate whether Gayder might have improperly used the Special Fund to pay for the Parnell paint job, he should have presented any report he felt was relevant to the Board as a whole, and refused to participate in private discussions about such matters even though invited to do so by the Board chairman. Mrs. Taylor had been discussing her concern about wiretaps with Shoveller earlier in January, and had recorded in her notes her concern that Gayder was covering up illegal wiretaps. When Shoveller sent Newburgh to Mrs. Taylor with his concerns that his telephone was being tapped, it added fuel to her suspicions and further undermined Gayder. If Shoveller thought there was any substance to the matter, he should have instigated a proper investigation. I can only conclude that Shoveller, whether because he genuinely believed it was in the interests of the Force to get rid of Gayder, or because of his own ambitions, co-operated in the development of the events that led to Gayder's suspension.

It must have been obvious to Chief Gayder that, for months before his suspension, he and Mrs. Taylor were on a collision course. Nevertheless, he failed to recognize that it was his duty to divorce himself completely from his son's application for employment by the Force. At the December 22, 1986, meeting of the Monitoring Committee, he had urged that "alternates" from the last hiring session be re-interviewed without re-testing, and when he indicated that his son was one of the alternates, a "heated discussion" followed, in which he was told he had a conflict of interest and Mrs. Taylor told him he was "out of order." In spite of this, he appointed Deputy Chief Parkhouse as chairman of the Selection Board which would recommend who was to be hired. Parkhouse was known to be a Gayder family friend. When Shoveller returned from vacation on January 5, 1987, he told Gayder that the December 22 meeting had ruled out two of the "alternates," one of whom was Gayder's son; Gayder disagreed and appealed to Hanrahan. Although Hanrahan did not agree with Gayder's interpretation of the ruling, and said he would speak to Keighan and Mrs. Taylor, Gayder instructed Parkhouse to proceed with the interviews. Thereafter, Gayder continued to involve himself. At their January 20 meeting, the Board rejected the recommendation of the Selection Board that 12 candidates, including Gayder's son, be hired and directed the Selection Board to reconvene and re-interview certain candidates. When the Selection Board reported to the Board on January 27, recommending hiring of the same candidates as before, including Gayder's son, the Board decided not to hire anyone. Gayder attempted to speak, and was told to "shut up" by Mrs. Taylor. In the face of all this, Gayder requested a special meeting to discuss the matter further. That meeting took place on February 5. After Gayder explained his position at some length, the meeting was adjourned for an *in camera* session. When it reconvened, Mrs. Taylor laid charges against Gayder, and he was suspended by the Board.

Similarly, Gayder should not have become involved in the matter of the Parnell paint job. Upon learning of VanderMeer's call about Parnell to a bank head office, he should have done some investigation of the background through the chain of command rather than immediately asking Mrs. Parnell for an explanation, thus avoiding the impression that he was "tipping off" a suspect. Instead of advising her that she should lay a complaint, thus giving the impression that the Chief was siding with her, he should have referred her to the Complaints Bureau for advice. By sending two officers to obtain an explanation from Shoveller of his involvement, rather than speaking to him personally, he further damaged an already strained relationship.

These and other instances of poor judgement on the part of Gayder, including his casual attitude regarding guns, contributed to the crisis of early 1987, and to the rumours that damaged the reputation of the Force.

3 THE SPECIAL FUND INVESTIGATION

The source and purpose of the Special Fund has already been explained.[1]

On January 7, 1987, Shoveller and VanderMeer discussed the possibility that the Parnell paint job might have been paid out of Force resources and, according to VanderMeer, Shoveller suggested that the source might be the Special Account. The next day Mrs. Taylor made a note under the heading "Cor-Shoveller" about the possibility of wrongdoing, Gayder and the Special Account. VanderMeer testified that he considered the account as one of the possible sources of the paint job funds and, on January 13, he telephoned the head office of the Royal Bank, the bank in which the Special Account was kept.

On February 12, following his appointment as Acting Chief, Shoveller requested an audit of the Special Account before taking it over. No mention of possible wrongdoing was mentioned. The Board agreed, and referred the matter to Quattrini, the Board Administrator. Quattrini asked Shoveller for suggestions as selection of an auditor, and Shoveller referred him to VanderMeer. VanderMeer suggested Donald Holmes of the firm of Lindquist Holmes, which was then the forensic branch of Peat Marwick.

Both Mrs. Taylor and Shoveller testified that they had no suspicions concerning any misappropriation of funds from the Special Account, and had not intended a "forensic audit." However, Holmes wrote Quattrini on February 18: "I am pleased to respond to your inquiry concerning the possibility of retaining us for an investigative accounting service .... You feel your need is for a review that is more investigative than it is audit oriented."

In his evidence, Holmes explained that forensic accounting includes "the assembly of accounting evidence for litigation," and that a forensic accountant goes beyond a normal accountant in his investigation by doing "an investigative review." He agreed that he had clearly received a suggestion that there was cause for concern, but without any indication as to what the concern was.

His instructions were to examine disbursements only for the period from January 1, 1984 (the date Gayder became Chief) to February 23, 1987, which was after Gayder's resignation. It was explained that this period was selected because of the expense of going back further in time. However, in the light of the evidence heard during this Inquiry, I can only conclude that the "forensic audit," rather than an ordinary accounting audit, was called for in furtherance of the investigation of Gayder.

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[1] See p. 110.

Holmes' report was delivered to the Board on April 16, 1987. It found no improprieties, but recommended changes in the guidelines as mentioned in my earlier comments on the Special Fund. A criminal investigation of the Special Fund had been on the agenda for the IIT, but had been deferred until Holmes' report. Upon receipt of that report no further investigation was conducted.

4 THE INTERNAL INVESTIGATION TEAM

(A) FORMATION AND PURPOSE

Following Gayder's suspension on February 5, 1987, between February 6 and 9, Mrs. Taylor recorded in her notes references to a possible internal investigation. On February 9, Mrs. Taylor, Shoveller, Keighan and Saracino met with the Solicitor General and members of his staff to discuss the need for an investigation or a public inquiry. Shoveller wanted to have an internal investigation, and undertook that, if Mrs. Taylor would provide the information she had, and her sources, he would fully investigate those matters, and, "should there be evidence of criminal wrongdoing, that evidence would be placed before a Crown counsel prior to charges being preferred."[1] This commitment did not apply to *Police Act* charges. The meeting decided that Shoveller would institute an internal investigation.

On February 10, Shoveller asked Superintendent Leigh to head an internal investigation team. Leigh refused, citing his impending retirement. On February 12, Shoveller asked Superintendent James Moody to head up the investigation. Moody agreed on condition that he receive the rank of Acting Deputy Chief so that he would not have to report to Deputy Chief Parkhouse, whom he felt was a friend of Gayder's. On February 16, he was told this had been arranged.

Moody testified that his original mandate from Shoveller was to investigate "the happenings" at the Force garage at 11 Neilson Street and "whatever else I found." Shoveller states that he told Moody to deal both with the garage matters and Mrs. Taylor's allegations. He testified that his intent was to "put to rest these allegations, clear the air once and for all, let the public know what had been investigated, what the results were, where improvements were required, and what those improvements would entail."

On February 17, Moody approached VanderMeer and Sergeant Joseph Newburgh about the IIT, and they agreed to join the team. Moody testified that Shoveller told him that VanderMeer should be a member of the IIT, and that Mrs. Taylor had suggested this. Moody testified that VanderMeer was not his choice, that he had other people in mind, "but he was adamant, and he was the Chief of Police." Shoveller denied that he had been "adamant", or that Mrs. Taylor had told him to put VanderMeer on the

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[1] Shoveller's evidence (May 7-8, 1990).

Team. He testified that he suggested VanderMeer because he believed VanderMeer had information that would be of assistance, and because VanderMeer "had contact with the Chairman of the Board". Ted Johnson testified that he expressed his concern to Shoveller about the make-up of the team, and that "with respect to Sergeant VanderMeer, he indicated basically it wasn't in his control." The extent of Mrs. Taylor's involvement in VanderMeer's appointment is unclear, but I conclude that Shoveller felt she wanted VanderMeer on the IIT. To allow the appointment to be influenced by the Chairman's preferences was not proper.

Shoveller also testified: "I am not totally sure that if VanderMeer had not been involved in the investigation as he was, that there would not have been a second investigation ongoing." Under further questioning, he indicated that this meant that if VanderMeer were not on the IIT, he might have conducted his own private investigation anyway. Shoveller's concern was apparently justified. In September 1990, in spite of an order by Shoveller that there should be no parallel investigations of matters being investigated by the Commission investigators, VanderMeer involved D.B. in just such a parallel investigation. VanderMeer's own counsel commended him for it in his September 12, 1990 speech introducing the D.B. matter. He referred to Shoveller's testimony about VanderMeer running his own parallel investigations, and went on to say: "Well, it might be observed that Sergeant VanderMeer's parallel investigation is bearing fruit, and it has just begun."

Shoveller agreed that VanderMeer's methods of investigation were "abrasive." If he felt he could not control VanderMeer and prevent him from undermining the IIT by conducting his own private investigation, the worst possible solution was to appoint him to an investigation as sensitive as that projected for the IIT where it could be expected he would go off on his own and take the investigation with him.

The IIT officially began its operations on February 18. Newburgh recorded that the mandate they received from Moody was "investigation into allegations of corruption and wrongdoing by some senior officers and mid-line supervisors." He recalled Gayder, Lake, Marvin and 11 Neilson Street being referred to, with the Gayder matters being nepotism, favouritism and guns. On February 20, Newburgh and VanderMeer had a lengthy meeting with Mrs. Taylor to receive her information of the matters she felt should be investigated, and also met with Baskerville to discuss the allegations he had provided to Mrs. Taylor.

The original concentration on Gayder's involvement in garage "happenings," the circumstances surrounding the opening of closet 374, and the centering of the IIT's interest almost exclusively on the conduct of Gayder and those seen to be members of his group, and the way in which the IIT's reports were framed, make it clear that Gayder was the focus of the investigation. Mrs. Taylor involved herself in the investigation from the start, probably even to the extent of suggesting the inclusion of VanderMeer as a senior member of the team. As an individual member of the Board she had no business getting involved in a departmental investigation at any time, but even more so when she was responsible for the suspension of the ex-Chief upon whom the investigation was centered.

(B) METHODOLOGY

The methodology of the IIT was the subject of much criticism by some of the parties; it being submitted that its members started off with a bias against Gayder and those who were seen as part of his clique. It was submitted that they proceeded into each phase of the investigation with preconceived ideas of what they would find, and this resulted in their reports being slanted against Gayder. The evidence supported those submissions.

(1) The Parnell paint investigation

The investigation of the Parnell paint job was the first example. Although it occurred just before the IIT was formed, the investigation was carried out by Sergeant VanderMeer, who later was the de facto head of the IIT, and resulted in a lengthy and critical examination during the IIT phase of the Inquiry. On January 9, 1987, VanderMeer received the paint job invoice, marked "paid by cheque." He justified his refusal to accept the invoice as proof that the job was invoiced to and paid for by Parnell because it was addressed to her in care of the Chief's office, even though Shoveller, who ordered the investigation, testified it satisfied him that Parnell had personally made the payment. VanderMeer was suspicious that, even if Parnell eventually paid, the initial payment may have been made out of the Special Fund, and then repaid by Parnell. At that point, the reasonable next step would have been to approach the garage that did the painting, or approach Mrs. Parnell herself, requesting proof of payment. Had either of these steps been taken, the documentary proof of payment by Parnell would have been produced, as it was to the Commission investigators, and that would have been the end of the matter. Instead, VanderMeer, apparently because he was already convinced there must have been some fraud involved, proceeded to canvass the head offices of the chartered banks with inquiries about Gayder's secretary's account, telling them it was a "strictly secret" investigation. The poor impression of the NRPF administration this must have caused is illustrated by the phone call to Gayder by a member of the bank head office security unit. The fact that the private paint job had been arranged through the Force garage was never denied, but that did not seem to be the issue. It is apparent that, rather than being an investigation into the operations of the Force garage, it was an investigation of Parnell and possible misuse of Force funds by Gayder.

That investigation was followed by the IIT investigation into the Parnell tire switch, the general circumstances of which have already been described. However, the manner in which the IIT embarked on that investigation indicates a heavy-handed approach which was too often evident in their other investigations, and caused concern on the part of the Police Association and many of its members.

(2) Closet 374

The history of closet 374 and its contents is outlined in Part I, Chapter 2 (C) (1), "Firearm Storage Facilities." I return to the subject here only regarding the circumstances of its opening as they illustrate the methodology of the IIT.

In the spring of 1986, John Rhodes, a civilian Force employee, at Gayder's request, moved several boxes of guns from a closet that was to be remodelled into closet 374. Only Chief Gayder and his secretary, Mrs. Parnell, had keys to the closet lock. Rhodes told his sister, Carol Berry, also a civilian employee, about the guns, and Mrs. Berry told VanderMeer. Unfortunately, she did not tell her superior officer, Sergeant Kopinak, since he would have told her that he had assisted in moving the guns at an earlier date into the closet that was to be remodelled, and this might have avoided the appearance of mystery, and the circulation of a new rumour. VanderMeer reported the matter to then-Superintendent Peter Kelly and suggested obtaining a search warrant, but apparently nothing was done.

Following formation of the IIT, on February 19, VanderMeer interviewed Carol Berry about the matter. Later in the day, Shoveller, Moody, Newburgh and VanderMeer had a meeting, and a discussion developed about "Gayder's closet." The presence of guns in the closet was mentioned, and checking the guns was set as a priority, but Shoveller was reluctant to authorize opening of the closet at that time. VanderMeer testified that in the next several days he brought up the matter of opening the closet "nearly daily" with Moody, and a search warrant was discussed.

As head of the IIT, Moody was given office space near the Chief's office. On February 23, Moody used a small screwdriver to slip the lock on closet 374, and stated he was amazed to find the boxes of guns and other weapons and police documents. He had asked Billie Hockey, whose desk was near the closet, whether she had a key, but she did not. He did not ask Mrs. Parnell, Gayder's secretary, who occupied an office nearby, and who had a key, whether she had one or knew where one could be found.

Shoveller testified that, had he wanted to open the closet, he could have obtained the key. It would appear very little investigation would have been required to locate a key had it really been wanted. Moody testified under severe cross-examination that he was merely looking for a place to put his coat and briefcase, and was completely unaware of the possibility of guns being stored there. There was another closet just as close, but he testified he did not want to use it because it had no lock. He denied that he was present during the discussion about the closet, but the others testified he was there, and their notes so stated. Under the circumstances, Moody's failure to recall hearing about the guns, or to recall VanderMeer's daily references to opening the closet, is difficult to understand, as is his failure to make any real attempt to locate a key.

I conclude that Moody opened the closet as a result of the speculation about its contents at the February 19 meeting, and VanderMeer's daily urgings. However, in lieu of obtaining a search warrant as suggested by VanderMeer, and in view of Shoveller's refusal to authorise its opening, Moody apparently adopted the ruse of jimmying it open for the innocent purpose of hanging up a coat. This was not an auspicious start for what should have been a fair and objective investigation, and must have sent the wrong message to the members of the IIT as to the type of investigative methods that were acceptable.

(3) The Parnell tire investigation

On Sunday, April 26, 1987, Mrs. Parnell and a woman friend were returning to Mrs. Parnell's home after taking a walk in the neighbourhood. Newburgh and Rattray drove up in an unmarked car, and told Parnell they would see her at her home a couple of blocks away. As Parnell approached her home, she saw a second car occupied by VanderMeer parked nearby. As Parnell and her friend arrived at the Parnell home, Newburgh, Rattray and VanderMeer approached and told her they had a search warrant to search her house for documents and property stolen from the Force. Tires on her car were mentioned. Parnell remonstrated with them for executing the warrant on Sunday at her home in full view of her neighbours, and pointed out that the officers saw her and her car every day at the police station and they could approach her then. They said they wanted to go in the house, and Rattray opened the screen door and tried the door knob. Parnell objected, and swears that Rattray said: "We're coming into your God damn house whether you like it or not." Rattray's version is that he said "If we've got to kick the God-damned door down to get in, we're going to do it."[2] VanderMeer and Newburgh state they did not hear this.

The group entered the house, asked Parnell for her cancelled cheques, which she produced, and Rattray telephoned for a tow truck to come to take the tires off her car. Parnell protested at the publicity this would cause in her neighbourhood when many people were outside on a fine spring Sunday afternoon, and after discussion, Rattray cancelled the tow truck and Parnell drove her car, with a police car ahead and one behind, to the Force garage. Parnell left her car there for removal of the tires, and the friend, who had followed in her car, drove Parnell home. Parnell subsequently laid a complaint about the matter.

There was good cause for suspicion about the manner in which the tires had been acquired, and for a proper investigation. However, the bullying tactics employed by the investigators in relation to a fellow female employee were unnecessary, and to move in on the Chief's secretary on a bright spring Sunday afternoon in full view of her neighbours exemplified a heavy-handed approach that is simply unacceptable. This attitude is consistent with other evidence that indicates the IIT considered that its mandate made it a law unto itself.

(4) The Chiavarini guns investigation

As a result of finding two guns registered to Ralph Chiavarini in closet 374 without any occurrence report having been filed, the IIT in its report to the Attorney General asked the question: "Considering all the circumstances pertaining to the Chiavarini incident: did Sergeant Allan Marvin and James Gayder violate the appropriate sections of the *Criminal Code of Canada* dealing with delivery and possession of restricted weapons, for which they did not possess the proper permits? Moreover: did their actions constitute Theft as defined in the *Criminal Code of Canada*?"

The evidence at the Inquiry was that on March 19, 1987, Mrs. Chiavarini was interviewed by the IIT, and she signed a handwritten statement prepared by one of the interviewers. It stated, inter alia: "At the time I gave the policeman these guns, I did not want him or anyone to have them. I wanted them disposed of in whatever way the police did it." However, at the Inquiry, she denied that she told the interviewers this. She stated that she had been away for three months and had been home less than half an hour when the police arrived and interviewed her for about an hour. She stated that she was very tired and signed the statement after only scanning it, and was not given a copy. She testified that she had told them she had wanted the guns kept in safekeeping until she called for them. She stated that when she was served with a summons to appear at some hearing (perhaps the *Police Act* charge against Marvin) around May of 1988, she was given a copy of her statement which said she wanted the guns destroyed. After reading it, she phoned the NRPF officer who served it and told him there were errors, that "I did not want my guns destroyed. My guns were in safekeeping." Two days later the officer phoned her to say she would not be needed, since the man charged had pleaded guilty. She could not now remember the name of the officer.

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[2] Inquiry transcript, vol. 151 (Jan. 31, 1990):142.

It is apparent that Mrs. Chiavarini's statement was prepared to support what the IIT interviewers already believed was the case; that is, that Gayder had kept for himself guns that were turned in for destruction. Whether or not Mrs. Chiavarini had originally put her mind to the issue of when and if the guns were to be returned to her, impartial questioning by the IIT interviewers would have soon revealed that her evidence would not support their subjective conclusions. Those premature conclusions resulted in a false statement of facts being forwarded to the Attorney General in substantiation of their suggestion that the Ministry should recommend the laying of the very serious charge of theft against Gayder and Marvin.

(5) The Welland guns investigation

The information forwarded to the Attorney General in the IIT report has already been set out in the Property section of this report. However, much more evidence in that regard was heard by the Inquiry, and gave a further insight into the manner in which the IIT conducted its investigations.

Martin Walsh, who became Deputy Chief of the Welland Force in May, 1969, upon taking up his new duties, found a number of weapons in a safe in the Welland Police Headquarters and assumed they were seized weapons that his predecessor had placed there. Walsh thought such weapons were the property of the Attorney General, and wishing to dispose of them, offered them to the Attorney General's Crime Laboratory (now the Centre of Forensic Sciences), but they declined the offer. He testified he has some recollection of speaking to a Crown Attorney, in the presence of his Chief, Fred Wilson, about offering them to a member of the St. Catharines Force, James Gayder, whom he knew to be a gun collector.

As a result of that conversation, Walsh believed that he had the consent of the Crown Attorney and Chief Wilson to offer the guns to Gayder, and took them in a bag to St. Catharines to meet Gayder. Gayder selected a number of guns, and agreed to register them in his name, and forward copies of the registrations to the Welland Police Department. In his will-say statement given to the IIT, Walsh stated that the balance of the guns were returned to the Welland Police Department and destroyed. Walsh cannot remember how many guns Gayder selected, but Gayder testified that he registered the guns he had chosen, perhaps as many as 17, and sent copies of the registrations to Walsh. Eight of these guns bear a registration date of June 20, 1969, showing them as transfers from the Welland Police Department, and on August 5, 1969, five more were registered to Gayder, three showing a transfer from the Welland Police Department, one a transfer from Welland Chief McCarter, and one a transfer from one Fred Munson. Gayder cannot remember the circumstances of these latter two transfers, and both McCarter and Munson are deceased.

As set out earlier, a will-say statement obtained by VanderMeer from ex-Welland Chief Fred Wilson on August 28, 1987, states that Wilson retired from the Welland Force on December 31, 1970, the eve of the regionalization, and that he never sold or gave guns to Gayder or anyone. Sergeant Melinko took a will-say statement from ex-Deputy Chief Martin Walsh on October 8, 1987, in which Walsh gave the same general information set out above, which contradicts Wilson's statement denying any gift of guns to Gayder.

The IIT, in its brief to the Attorney General, questioned Walsh's credibility because during the OPC's 1984 investigation, which found nothing illegal about the Welland gun transfers, Walsh had given an oral statement that the IIT interpreted as saying the delivery took place in 1971, whereas in his will-say he said it took place in 1969, before regionalization.

The brief goes on to state: "Gayder's explanation to the Ontario Police Commission investigators at that time was that he obtained them from Fred Wilson, Retired Chief of the Welland Police Force." The IIT interpretation is inaccurate. There is no suggestion in the OPC report that Gayder said he got the guns from Wilson. The OPC report quotes Gayder as stating that he received the guns "from the Welland Police Station when the Forces regionalized at the end of 1970." VanderMeer interviewed

Russell, one of the OPC investigators, on August 24, 1987, and Russell went over his notes of Walsh's explanation of the transfer of the Welland guns. Both Russell's notes and VanderMeer's notes of the interview quote Walsh as putting the transfer around May 26, 1969, being the date Wilson took over as Chief. Apparently this was the source of the statement in the OPC report that the transfer occurred "when the Forces regionalized at the end of 1970." The evidence is that the planning and takeover stage commenced in 1969. On the basis of all this, the IIT brief concluded that Walsh gave conflicting statements by stating to the OPC that the transfer took place in 1971, then telling Melinko it took place in 1969.

Looking at Walsh's statements dispassionately, it is difficult to conclude that they were in conflict. To discount his evidence, and accept Wilson's without question, on the ground that he was not credible because of that conflict, seems not only very unfair, but indicative of fundamental bias. Wolski, in his comments, pointed out that the IIT had relied too heavily on Wilson's recollection, considering that he was, at the time, 81 years of age. When the Commission investigators attempted to interview Wilson, they were not permitted to do so because of Wilson's mental and physical condition. A January 20, 1989 letter to the Commission from Wilson's doctor was filed, stating that since December of 1985 Wilson had suffered from "double vision, hearing loss, dizziness and confusion and memory loss," the memory loss being due to "hardening of the circulation." The doctor's opinion was that he was suffering from a mental condition "affecting his memory and judgement that made him an unreliable witness."

Mr. Wilson, of course, was not called as a witness, but his daughter, a registered nurse, testified that since an operation in 1985 he had had memory problems, periods of confusion, and at times made "inappropriate statements" in answer to questions, getting "steadily worse since 1985." She stated that the present problems were present in the summer of 1987, and although she had asked her mother to explain to the IIT interviewers that her husband was ill, a stranger might not have realized his mental problem.

It is hard to understand why the IIT stated in its brief that Gayder told the OPC he had received the guns from Wilson when VanderMeer's notes of his interview with Russell show that he was told that Walsh had told Russell that he gave the guns to Gayder. It is hard to understand why the brief stated that Walsh had said the transfer took place in 1971, when those same notes showed Walsh as saying it was around May 26, 1969. It is hard to understand why the IIT would completely discount Walsh's evidence in favour of Wilson's without checking with his wife or daughter about the 81-year-old Wilson's memory ability. In view of the fact that, as was seen in the introduction to the Property section of this report, most seized guns become the property of the Crown, not the Board, and Walsh had stated that he had checked with a Crown Attorney as to permission to transfer the guns, it is hard to understand why the IIT did not mention this in its brief or check out the accuracy of Walsh's statement before discarding it.

(6) The "California gun" investigation

Prior to October, 1969, all gun registrations were recorded by the RCMP on an individual's personal document known as a Fanfold. Commencing October 1, 1969, the RCMP converted the Fanfolds to a single certificate system for each weapon shown on a person's old Fanfold. The conversion was completed in the spring of 1971. One of some 62 handguns registered in Gayder's name on his old Fanfold N°. 4400 was a .32 H & R (Harrington & Richardson) serial N°. 3755, with a recorded barrel length of three and one-quarter inches, which he told the OPC investigators in 1984 had been included in the guns received from the Welland Police Department prior to regionalization. New individual registration certificates were issued to Gayder for each of the 62 guns. Fifty-seven of the new certificates were numbered in sequence, from D-595821 to D-595882, except for a few numbers which were unaccounted for. The .32 H & R was assigned N°. D-595862 and was shown as a conversion from Fanfold N°. 4400. This number was in an unbroken series from D-595848 to D-595876. Registration certificate D-595862, amongst others, was microfilmed by Police Archives, Ottawa, in October, 1972, thus establishing Gayder's ownership of the gun sometime prior to that date.

The IIT obtained documentary evidence from the Sacramento, California Police Department that a .32 H & R serial N°. 3755 with a barrel length of four inches had been stolen from one Corson in Sacramento, California, on November 26, 1973. They concluded that this was the gun registered to Gayder, and that therefore he was in possession of stolen property. In a letter of October 6, 1987, to the Ministry of the Attorney General, the IIT pointed out: "It is abundantly clear that Mr. Gayder is in possession of stolen property. This revelation also casts a heavy shadow of suspicion on the remaining twelve firearms registered to him, along with the numerous other weapons under his personal control." The latter reference was to the weapons stored in closet 374. The other reference was to the guns Gayder received from the Welland Police Department, one of which Gayder had said was the .32 H & R.

Important as it would appear to be to someone making a judgement call as to the legality of Gayder's possession of the gun registered to him, no reference was made to the sequential numbering of the registrations as indicating that that gun was included with the other 61 guns whose registrations were converted from Fanfold N°. 4400 prior to 1973. Nor was the difference in barrel lengths mentioned, although the IIT had in its possession the National Firearms Manual, which records statistics on all guns, and which showed two barrel lengths for this model. Apparently the IIT had come to its own conclusion that the Gayder gun was the California gun, and that therefore the registration must have been fraudulently arranged by Gayder while he was the local gun registration officer. Although some members of the IIT were aware of the possibility of duplicate serial numbers, it appears that this possibility was not discussed during preparation of the brief.

William Wolski of the Ministry of the Attorney General was impressed by the evidence the IIT presented concerning the "California gun" and advised that, if solid documentary evidence could be produced showing the Gayder gun was, in fact, the gun stolen in California, there would be sufficient evidence to justify the laying of a charge.

Further research brought to the IIT's attention the fact that duplicate serial numbers were sometimes issued to cheaper types of guns, such as the H & R, but was apparently not taken seriously. However, Sergeant Melinko, who did the main research regarding the California gun, testified that he knew by October 15, 1987, when the team went to Toronto to receive the Wolski report, that the California gun could not be the Gayder gun, that therefore there was no evidence that the Gayder gun was stolen, and so it no longer, of itself, cast suspicion on the other Gayder guns. He could not explain why he had not disclosed this to Wolski on October 15, but believed he told VanderMeer (which VanderMeer denies). He also testified that he reviewed the IIT's confidential report prepared by VanderMeer for the Police Board following the October 15 meeting, but apparently missed the part about the California gun being the Gayder gun, which he knew was "definitely wrong."

The evidence at the Inquiry hearings, as a result of the very thorough investigation by the Commission investigators, left no doubt that the Gayder gun could not be and was not the California gun. The same evidence was available to the IIT, and an open-minded approach by the IIT investigators would necessarily have led to a similar conclusion. However, having convinced themselves that Gayder was dishonest, they accepted only the evidence that supported that thesis, and that was what they presented in their briefs.

The California gun investigation is a graphic example of the flaws in the IIT methodology caused by their predisposition to believe that Gayder was dishonest.

(7) Schenck farm surveillance

The manner in which the IIT carried out its investigation of the Schenck farm card games was another indication of the attitude of the IIT toward authority.

On April 15 and 22, 1987, Onich drove out to the Schenck farm, recorded the licence numbers of the cars parked near the greenhouse, and checked the ownerships through the Department of Transport. He testified that this was his own idea because of the rumour "that people of a sinister nature played cards with the Chief."[3] He went to the farm alone on April 15, and Constable Rattray accompanied him on April 22. He testified that his investigation convinced him that the rumour was untrue, and he so advised the IIT. Onich was suspended for unrelated reasons on April 25, and no one attended at the farm on April 29. Rattray testified that, following instructions, he attended at the farm on May 6, and checked out the licence numbers of the parked cars. VanderMeer accompanied Rattray to the farm on May 13, and again the registrations of parked cars were checked out. On May 27, Rattray and VanderMeer drove out to the farm, but VanderMeer decided that the surveillance was "an utter waste of time ... it had been well established that it was just a bunch of guys playing poker, there was nothing nefarious about it."

On June 3, Rattray went out to the farm on his own. He was detected, and Parkhouse ordered Rattray to submit a report as to his reasons for recording licence numbers of cars parked at the farm. Rattray prepared a very offensive three-page report to this very senior officer, concluding with a refusal to advise why he was checking out licences: "Just let me remind you of my status as an investigator assigned to a Special Internal Investigation Team set up by Acting Chief of Police John Shoveller. I am sure you are aware of the mandate and scope of the investigation." It is unclear whether the memo was ever sent. Rattray testified that he was instructed by Shoveller and Moody not to send it, and he prepared a much milder version. Moody believes the original was sent to Parkhouse. Rattray testified that he stood by his original version: "I was caught up in the atmosphere... my attitude at the time was probably exemplified by the way I wrote the memorandum."

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[3] Inquiry transcript, vol. 155 (Feb. 8 1990):34.

The "atmosphere" in which Rattray was caught up exemplifies the arrogant and high-handed manner in which some members of the IIT carried out their investigations, a manner which resulted in the protests of the Police Association, and some of its members, about the make-up and methods of the IIT. As well, evidence indicated that the suspicion entertained by some officers that the purpose of the surveillance was to identify Gayder's associates, rather than to discover whether there was evidence of some criminal infiltration of the Force, resulted in a decrease in their confidence in the integrity of some of their superiors.

(8) Aggressive witness interviews

During the course of their evidence, several witnesses complained of the overly aggressive manner in which they were interviewed by IIT investigators. It is apparent that some of the interviews were actually interrogations. Inspector John Stevens was so concerned about the manner in which VanderMeer interviewed him about Gayder's guns, and VanderMeer's assumption of Gayder's criminal guilt, that he afterward made notes of the interview and the way in which VanderMeer's questions were framed. He noted: "Sergeant VanderMeer stated several times that a man must be sick to want so many guns, and tapped the side of his head, saying, there has to be something wrong with his mind ... Most of the "questions" were in the form of an opinion expressed by Sergeant VanderMeer followed by a phrase asking if you agree, such as "nobody needs that many guns, right?" "there is no way he should have that, wouldn't you say?" and "he should know the law, shouldn't he, after all he is a policeman," "a man's gotta be sick, doesn't he?" "you wouldn't put that in a museum, would you?" "that's obscene, isn't it?" There was not even a hint of an impartial investigation being conducted by Sergeant VanderMeer."

Robert Smith of Albion Arms was interviewed in Ottawa by VanderMeer and Newburgh on June 2, 1987. He considered they were not objective in their questions and had already concluded that Gayder was guilty. He was concerned enough to tape-record much of the interview, and afterwards recorded some of his thoughts on the tape. One observation was: "I thought that the Niagara Regional Police Department could not take two better officers if they wanted to hang the police Chief. Both of them appeared to have an axe to grind for whatever reason."

Ted Johnson, the Administrator of the Police Association, and a supporter of Gayder, testified that Beverley Allan, a former Board member, after being interviewed by VanderMeer about Gayder's trailer hitch, telephoned him to express her concern over VanderMeer's "demeanour" and that he seemed "obsessed with getting and charging former Chief Gayder." Johnson stated he was also called by Sergeant Pay who complained that "after he had been interrogated ... that he felt like he was in a prison camp by the way he was treated and the demeanour of his interrogators." Michael Miljus testified that when he was interviewed by VanderMeer on June 17, 1987, he was shocked by the way he was treated, and that the interview became an interrogation. Ronald Brady, Police Association counsel, filed a com- plaint on behalf of Reginald Ellis about the manner in which Ellis had been interrogated by VanderMeer. Elizabeth Parnell filed a complaint about Rat- tray's language at the time of the Parnell tire investigation. Mr. Schenck filed a complaint about the IIT trespassing on his property while checking the licence plates of those attending card games.

Bullying tactics should have no part in the interviewing of witnesses, and detract from the credibility of the statements so secured. Such tactics, when employed in an investigation such as that of the IIT, are indicative of a bias that calls into question the reliability of the investigators' reports. The IIT became carried away with the powers that it assumed, and the questionable factual basis for the reports it prepared has increased the Commission's difficulty in concluding what is the real truth.

(9) The focus on Gayder

During the hearings, it was frequently alleged that the IIT improperly targeted specific individuals. In May, 1987, the Police Association had made public comments that the Internal Investigation was a witch-hunt. At the Inquiry, Ted Johnson, Administrator of the Association, testified that it was his perception, from conversations with the Association members, that the

IIT had "targets already marked," being Gayder and senior officials allied with Gayder.

A good deal of the evidence already set out in this report substantiates this suggestion. There was further evidence to this effect. Constable Paul Hampson testified that, before Gayder's suspension, he was asked by VanderMeer to become part of a projected internal investigation. He stated that he was left with the impression that the investigation was spearheaded against Chief Gayder and his senior officers, and he turned down the invitation because he felt it was "head-hunting." He testified that sometime around 1984 VanderMeer had told him that "if it was the last thing he ever did, he would get Jim Gayder," because "he felt that Mr. Gayder was a crook and a thief and corrupt." Questioned about whether he had said this, VanderMeer testified: "Hell no, I like Jim Gayder." Hampson was vigorously cross-examined by VanderMeer's counsel, but he did not back away from his statement, and VanderMeer's attitude towards Gayder during the Internal Investigation is more consistent with Hampson's recollection of the conversation than is VanderMeer's.

Constable Brian Eckhardt testified that Constable Onich of the IIT told him, following Gayder's suspension, but before his resignation, that the IIT was intending to "ratchet" Gayder, by laying continuous charges; that Onich stated "we'd lay two this week, pull it back, slam two more the next week, pull it back, and do the same thing the week after to keep the pressure on." Onich could not recall this conversation, but did not deny it had taken place. The evidence is consistent with the fact that, when faced with the cost of defending additional *Police Act* charges following his suspension, Gayder resigned.

Further evidence of the IIT's focus on Gayder was supplied by Constable Lee Rattray, who was himself a member of the IIT. Although he had no training or experience as an investigator, Rattray entered enthusiastically on the investigation. He was granted standing at this Inquiry as a member of the IIT, but did not join with other members in retaining counsel, and instead acted for himself in examining witnesses. He himself was called as a witness, and his evidence about the direction of the investigation was consistent with other evidence that the suspected misconduct of Gayder and his supporters was the primary interest of the investigators.

While being questioned about the direction taken by the IIT following the discovery of the weapons in closet 374, he testified:

> "A. ... the general consensus right off the bat was James Gayder was going to jail, that's for sure.
>
> Q. Is that something somebody said?
>
> A. That's something they said. They all said it, and I probably said it myself, you know.
>
> Q. And you said it as well?
>
> A. VanderMeer and Moody, especially. VanderMeer, particularly, and Joe mentioned it. It was a fait accompli, this guy was, he was done."

He went on to say that there were references to "the St. Catharines mob ... meaning Gayder's associates ... they were talking about what I would say is people they had specifically targeted." He later explained that the origin of the persons was not the reason they were targeted: "... it just happened that the people that we seemed to be focusing on seemed to be from the St. Catharines faction."

At another point, he testified that everyone on the IIT was aware of the three-quarter inch discrepancy in the barrel lengths of the California gun and the similar gun found in closet 374.

> "Q. You've told me that this discrepancy in barrel length was noticed when the burglary report was received?
>
> A. That's the time frame I remember saying to myself, and telling them, you know, 'There's a quarter inch (sic) difference, you can't ignore it. And you can't ignore the chronology of the registration. You are out four years on that.' But again, they'd get huffy, and Sergeant VanderMeer especially, 'Whose side are you on,' and you know, that type of thing, so I shut up."

Following the earlier phases of the Inquiry which revealed the flaws in the IIT investigation of Gayder, Mrs. Taylor testified that she had not intended the Internal Investigation to be an investigation of Gayder, and was mainly concerned with the possibility of infiltration of the Force by organized crime. That is contrary to the evidence, and is simply not credible. There is no mention in her evidence or that of any one else that she expressed any concern about organized crime prior to her call for a public inquiry. In December, 1988, her counsel stated that this Inquiry was called just on the basis of guns.[4] Her memos to Shoveller and correspondence with the Solicitor General during her calls for a public inquiry focused on Gayder's alleged misconduct. These are set out in detail in the section "The Call for an Inquiry." She was in regular contact with members of the IIT throughout its investigation and had to know it was concentrating almost exclusively on Gayder. Nowhere in its reports is there a mention of organized crime.

I can only conclude that the focus of the IIT was, and was intended to be, upon Gayder and his alleged misconduct.

(10) The use of lawyers

VanderMeer testified that he obtained informal advice from two lawyers, Stephen Sherriff and Peter Shoniker, both of whom were former Crown Attorneys, as to whether there was evidence to support criminal charges against Gayder. This raised the question of the propriety of police investigators seeking gratuitous advice about an on-going investigation from a lawyer other than a Crown Attorney. Counsel for Chief Shoveller suggests, in his submissions, that, since the credentials of such a legal advisor are necessarily left to the subjective judgement of the individual police officer, there are inherent dangers in the practice, and the practice undermines the authority of the Ministries of the Attorney General and Solicitor General.

I agree. There is the added problem that the lawyer so consulted is likely to be a criminal defence counsel, and the situation may give the appearance of a mutual aid relationship, where return favours are expected.

I recommend that there should be a force regulation prohibiting police officers from soliciting legal opinions regarding an on-going police investigation from anyone other than a Crown counsel without having first obtained specific authority from the Chief of Police or a senior officer designated by the Chief.

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[4] Inquiry transcript, vol. 12 (Dec. 12, 1988):117-119.

(C) THE INTERNAL INVESTIGATION BRIEFS

Shortly after the opening of closet 374, Mrs. Taylor advised Shoveller that Dunlop, who had been retained as the Board lawyer, had suggested an investigation of the closet contents and the laying of charges, if warranted. Shoveller directed Moody to proceed with this, and on Friday, February 27, VanderMeer recorded in his notebook: "Moody and Shoveller in office – to work weekend if required to put together two or three charges re property seized." Moody's notebook records: "Chief Shoveller – concentrate on several good ones – have VanderMeer work with Onich." VanderMeer worked all weekend on a brief, and presented it on Tuesday, March 3, during a five-and-one-half-hour meeting with Mrs. Taylor, Dunlop, Shoveller, Moody, and Newburgh, together with an oral summary. According to their evidence, no one seems to have read the brief at that time, but relied on what Newburgh and VanderMeer told them about the evidence.

The brief was drafted in terms of *Criminal Code* charges, listing six *Criminal Code* offences, although it was expected to be for *Police Act* charges. Perhaps because it was prepared in such a hurry and with little research, the brief lacked objectivity, and it may be assumed that the oral presentation did likewise. It emphasized the court order for destruction of the Reintaler knife, without attempting to verify whether such an order had been made. It placed Gayder in personal possession of the knife and the Caine gun without investigating the facts about control of the items in the closet. It dismissed Gayder's letter requesting permission for a museum because it was addressed to the wrong Ministry, when a proper examination of the *Criminal Code* would have revealed that it was sent to the right Ministry. It rejected the museum defence as "absurd" based on a subjective opinion of what should and what should not go in a museum. It concluded that Gayder had committed theft in relation to the silver tea service despite the fact that it had been found in the basement of the police building and had never been used by him.

On the basis of the brief, Dunlop recommended the laying of further *Police Act* charges, and six were drafted. On March 4, before they could be laid, Gayder resigned. On the same day, Mrs. Taylor delivered to the Solicitor General a copy of the brief, with a covering letter advising of Gayder's resignation and the text of the six additional charges that had been drafted. At the same time, a press release was issued to the same effect.

On May 25, 1987, Moody and Shoveller took a first draft of another brief concerning Gayder to a meeting with Douglas Hunt, Assistant

Deputy Attorney General. The brief cannot be located, but it was separated into different sections, with a statement at the end of each section setting out the investigators' conclusion as to whether an offence had been committed. Moody and Shoveller decided that future briefs should not set out conclusions as to guilt, but instead should pose a question as to whether the preceding section disclosed criminal conduct.

Shoveller testified that, nevertheless, briefs were submitted to the Ministry of the Attorney General only where it was considered there was sufficient evidence to warrant a criminal charge. VanderMeer's notes refer to his preparation of "Gayder Crown Brief," and Mrs. Taylor, in a letter to Hunt, refers to the Gayder volumes as a "comprehensive crown brief." A memo from Newburgh to Moody dated April 28, 1987, reported on the progress of the IIT investigation, and concluded: "As each matter is investigated and sufficient evidence is found to support criminal charges, a brief will be prepared for discussion with the Crown Attorney's Office."

VanderMeer's foreword to the November 1987 critique of the Attorney General's recommendation against laying charges, which he prepared for the Board, stated that it was the submission of the IIT that "Mr. Gayder contravened numerous sections of the Criminal Code of Canada." It is apparent that the IIT had come to its own conclusion about Gayder's guilt, even though, as ordered, the briefs posed questions in that respect.

Newburgh and VanderMeer clashed over Newburgh's revision of a part of a brief regarding Ron Bevan, and the change of a word in the closet 374 brief. Newburgh recorded in his notes of June 9, 1987: "VanderMeer complained about me altering his brief — is extremely bitter. Moody unable to resolve the problem as I feel that VanderMeer's writing reflects bias toward the subjects of the investigation i.e."pried" as opposed to "accessed" in Moody's entry to room 374 ... I feel ... the word "pried" is too strong."

Mrs. Taylor's notes of that day record that VanderMeer told her that he was requesting a transfer because of Newburgh changing his reports and accusing him of trying to set up Inspector Bevan. It thus appears that VanderMeer felt he was the designated author of the briefs, even though Newburgh was supposed to be second in command to Moody. Rattray testified that at one point, following a critical remark by VanderMeer, Newburgh tore up the brief he had been preparing, and from then on VanderMeer prepared the briefs. Newburgh's notes state that on June 10, Shoveller "counselled us on our differences, ultimately resolving the problem by having VanderMeer complete the brief and it being reviewed by Moody and I." The word "pried" remained in the brief, and was used in the critique of the Wolski report prepared by VanderMeer for the Board in October.

On June 16, five briefs were delivered to the Ministry of the Attorney General, followed by a sixth on June 21, and Newburgh then went on sick leave, prior to retiring from the Force. He took no further part in the investigation.

Although VanderMeer prepared the briefs, he ascribed responsibility for the final contents to Moody as the appointed head of the IIT. Moody's evidence is that he reviewed the briefs only as to form, their covers, index and spelling, but had no input as to substance, the contents being VanderMeer's responsibility. Shoveller received copies of the briefs, but stated that, due to his other duties, he did not read them, and relied on oral briefings from Moody.

The foreword to the briefs contains references to events, prejudicial to Gayder, and not related to the subject matter of the briefs or not supported by evidence contained in the briefs. Examples include allegations of association with organized crime individuals, the DeMarco wiretap and the John Gayder hiring matter. Witness statements and will-says contained extraneous material, such as the G.H. investigation, the death threat against VanderMeer, and Mrs. Taylor's concerns about Gayder intimidating her with his berry picking remark. It is difficult to understand the relevance of such material in briefs submitted to the Attorney General in support of unrelated charges against Gayder based on possession of guns and similar matters, unless it was designed to influence the Ministry with such unsupported innuendoes.

As will be seen from my review of the various allegations contained in the briefs, the briefs were replete with errors, misleading statements and unwarranted conclusions of fact, and ignored available evidence that would undermine the IIT's conclusions. This resulted in a large number of proposed charges that were unsupportable, something one would not expect from experienced and impartial investigators.

A prime example is the manner in which the closet 374 episode was presented. In spite of Moody's objection, VanderMeer insisted on using the word "pried" to describe the opening of the door, creating the impression that this was a secret "cache" of weapons to which Gayder carefully guarded any access, although the evidence is that Gayder made no effort to keep it secret. The IIT obtained a statement from Inspector Turnbull, who was seeking storage space, that Gayder had told him "that he had weapons stored in the cupboard and as soon as he could find the time to sort them out for those he wanted for the police museum, I would have to wait for this storage space" [*sic*]. This was not disclosed in the narrative portion of the briefs, despite its relevance to the secrecy of the "cache" of weapons, and their purpose and suitability for the museum. Nor was Sergeant Pay's evidence to the same effect fairly presented. The brief stated "there never was a weapons museum" but as has been seen, this was not correct. It stated that "It has been suggested that the weapons were being stored for the purposes of a proposed police museum. The Special Investigation Unit respectfully submits that this is preposterous ...." The brief stated that Gayder had applied to the wrong Ministry for a museum permit. An inquiry to the Solicitor General's Ministry would have revealed that this was not correct, and that, in any event, no permission was required. As pointed out earlier, Rhodes' evidence about moving weapons into the closet was not presented fairly.

Another example is the allegation that weapon trades were conducted illegally and without Board knowledge. This was not in accordance with the facts and contained no acknowledgement that the practice had gone on for years before Gayder took over. Similar examples of inadequate research and unfair presentation have been seen in the sections on the various handguns, particularly the Welland guns, the California gun, the Chiavarini guns, the guns with obliterated serial numbers, the Remington Woodmaster rifle, the Key diamonds, the silver tea service, the Reintaler knife, and the cruiser trades and repairs.

The number of errors and unsupported statements contained in the briefs prepared by VanderMeer is far greater than one would expect from these experienced and intelligent investigators, and suggests that, once they had obtained information that they felt supported their suspicions of misconduct, they did not investigate further, and turned their attention to the many other allegations that they were being pressed to report upon. The result was that the briefs presented a distorted and often slanted picture, as if designed to persuade the Attorney General of Gayder's guilt, rather than to present all the evidence bearing on each issue in an objective way. The single-mindedness of their approach indicated that the members of the IIT had made up their minds, and truly believed, that Gayder was guilty of a number of criminal offences, and thereafter they were psychologically unable to credit evidence to the contrary.

The manner in which members of the IIT carried out their investigation was such that the president of the Police Association and Ted Johnson, its Administrator, felt compelled to travel to Toronto to protest to the Deputy Attorney General about the make-up of the team and the "rather high-handed and aggressive methods that were being used ..." and to request that the investigation be turned over to an outside police agency.

I conclude that members of the IIT entered on their investigation with a predisposition to believe that Gayder was dishonest, used over-aggressive interrogation methods rather than conducting unbiased interviews, and prepared reports with tunnel vision that did not give effect to evidence that did not accord with their own conclusions. The result was that the majority of the members of the Force lost confidence in the investigation, and the rumours and allegations which it was intended to lay to rest, one way or another, continued and others were generated.

CONCLUSIONS

Very early in the Inquiry it became apparent that if the Commission was to fulfil its mandate to report and make recommendations with respect to the operation and administration of the NRPF, it would be necessary to look into the formation and operational methods of the IIT. The internal investigation was a very controversial one, and had a serious effect on the operration and administration of the Force. It was the IIT's report that led the Board to call for a public inquiry as indicated by the original Board resolution, which was for "a public inquiry into allegations of improprieties involving Niagara Regional Police Force officers *as investigated*" (my emphasis).

Mr. Shoniker, as Board counsel, in his May 1, 1989 written submissions on the gun phase of the Inquiry, requested an investigation into the IIT, stating: "Like the Board, officials of the Attorney General's staff relied upon the evidence gathered and the statements of fact within the internal inquiry material. It has become evident that the various reports authored by the internal inquiry team are faulty. The reports are, in some aspects, flawed and misleading. This is an issue which should be addressed fully by this Commission upon the completion of all evidence relevant to term of reference number 3." Several other counsel also called for such an investigation. I am satisfied that Board members, including Mr. Woodhouse, were fully conversant with the day-to-day evidence and submissions by counsel. It is therefore difficult to understand why Mal Woodhouse, on

September 7, 1990, wrote to Premier-elect Bob Rae, with a copy to Premier Peterson, setting out many complaints about the conduct of the Inquiry, and stating that Board counsel had objected to any investigation of the IIT "on the basis that it was not mandated by the Order in Council," particularly in view of the fact that, according to the testimony of Mal Woodhouse, the author of the above submission was also the author of the letter. The letter was released to the media and was the subject of considerable media comment. Perhaps the reluctance to have the IIT investigated arose when the Board discovered that this was leading to a Commission examination of the Board's involvement.

My reasons for "investigating the investigators" were set out in my April 30, 1990, ruling on the "Starr motion,"[5] which arose out of a submission by VanderMeer's counsel, supported by Board counsel, that the Starr decision prohibited me from investigating the IIT and making any findings of misconduct against members of the IIT, or others. That part of my ruling was as follows: "There has, however, been evidence that members of the Force perceive some of the Internal Investigation Team members to be guilty of bias, intimidation and improper investigative techniques employed while interviewing various Force members, and I consider that a review of the methods used by the Internal Investigation Team forms part of my mandate to ascertain whether there has been a loss of confidence in the Force and to make recommendations to correct any defects in policy, training or methods of selecting investigators ...."

In view of the numerous rumours and allegations of misconduct and corruption on the part of Force members circulating throughout the Force and the public, an investigation into them was essential so that they could be brought into the open and dealt with. The concerns of the Board, and particularly of the chairman, about the integrity of the Chief had to be investigated. Such an investigation is inherently difficult and sensitive. The investigators must be, and be seen to be, fair, with no preconceived ideas about the matters to be investigated, and no bias against those persons to be investigated. The wrong approach by the wrong people can create more problems than they solve. The manner in which James Gayder was suspended, and the apparent pressures on him to resign or be fired created in some minds the perception of a "palace coup." The resulting internal investigation and the divisiveness it engendered clearly illustrated that an investigation into alleged misconduct by senior officers of a police force should be conducted by an outside agency.

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[5] Appendix I.

From the first, the internal investigation appeared to be an investigation of James Gayder, and its objectivity was suspect. Each investigator apparently started out with a bias against Gayder. Shoveller, who appointed the investigation team, and to whom it was to report, told the Commission investigators: "As far as an individual is concerned, Jim Gayder was one of the most personable individuals that you'd ever want to meet. As far as Chief of Police was concerned, I had absolutely no respect or any use for him." The nominal head of the investigation was Acting Deputy Chief James Moody. Moody testified that for years he had suspected Gayder's honesty in connection with guns and a tile cutter that Gayder had taken home from Stores while doing house repairs. He stated that "... I considered him to be a liar and a thief. And I still do." Newburgh, a staff sergeant, and therefore next in command to Moody until retiring part way through the investigation, suspected his telephone had been wiretapped, and that Gayder was involved. VanderMeer, who took over effectual control on Newburgh's retirement, referred to Gayder as "the Thief of Police."

Onich, a member of the IIT, obviously doubted Gayder's honesty, testifying that he did not report his suspicions regarding Gayder and the "museum gun" because he did not trust his superiors. Melinko had long suspected Gayder of using Lake to obtain seized guns. Although Rattray went along with the IIT methodology during its investigations, he became the maverick of the IIT during the Inquiry, refusing to join the others in being represented by one counsel, in distancing himself from some of their conclusions, and apparently belatedly concluding that the IIT had been tainted by bias. The two civilian members of the IIT were added for administrative duties, and took no active part in the actual investigation.

The opening of closet 374 by Moody was the first matter investigated by the IIT. It was made a public event by inviting the media and the local MPPs to view "Gayder's guns." This was followed by further *Police Act* charges laid in what some perceived as a successful attempt to "ratchet" Gayder into resigning. Thereafter, nothing was likely to persuade the Gayder supporters within the Force that the investigation was unbiased, or that the investigation was not aimed mainly at them.

This feeling was exacerbated by seeing the Board chairman, whose views of Gayder were well known by this time, frequently having coffee with the IIT members in the IIT offices during the IIT investigation. It is the responsibility of the members of a force's governing body to support the independence and credibility of an investigation of this kind, and it is essential that they should avoid any appearance of involvement in the investigation.

Further, in establishing such an investigation, its mandate must be clearly defined. Open-ended or vague instructions are an invitation to allow personal prejudices to influence the direction of the investigation and the conclusions reached by the investigators. Personal crusades have no place in an investigation. Nevertheless, perhaps because of the vague nature of the instructions given it, (Moody does not recall being given any priorities), it is apparent that the IIT concentrated its time and energy on what it perceived to be Gayder's indiscretions, ignoring many of the then current allegations about important matters unrelated to Gayder which the Commission staff later investigated and reported upon.

As an integral part of the mandate of the IIT, priorities should have been established to reflect the real purpose of the investigation. This would have avoided the futility of spending time and resources on a trailer hitch and a tea service, while no time was found to look into allegations of infiltration by organized crime which left a cloud of suspicion hanging over the Force.

There was little or no supervision of the IIT by senior members of the Force. Shoveller stated that he wanted to remain at arm's length from the investigation, but having ordered an investigation by his own staff, rather than arranging for an outside agency, it was his responsibility to ensure that it was conducted properly. He had turned over responsibility to Acting Deputy Chief Moody, but Moody testified that he did not consider that, along with his other duties as Acting Deputy Chief, he was expected to be in charge of the day-to-day operations of the IIT. This he left to Newburgh until Newburgh's departure in June pending his retirement, and thereafter to VanderMeer.

On February 18, Newburgh met with Moody and VanderMeer and recorded in his notes: "Received instructions from Moody re investigation into allegations of corruption and illegal behaviour by members of the NRPF. Carte Blanche Mandate. No scheduled hours. Only restriction no arrests w/o [without] discussion with him." On March 16, Moody met with Shoveller, Newburgh and VanderMeer to discuss strategy. Newburgh recorded: "Strategy discussion re illegal wiretap allegation. Shoveller seems to place the theft of handguns from Welland City Police Department by Gayder as a priority .... He also wants Supply investigation as a priority." Moody, although heading up the investigation, did not recall any discussion of priorities at this meeting. Although he told the Inquiry he accepted no responsibility for the errors and flaws in the briefs because he looked only at the covers, the "form" and the spelling, he must have accepted many of the IIT's conclusions. On December 1, 1987, he wrote in a memo to Shoveller: "When this investigation began some ten months ago, no one could predict how blatantly criminal some of the actions of members or former members of our force would be."

The result of the fragmented direction of the internal investigation is illustrated by the faulty information contained in the IIT briefs which were given to the three criminal lawyers who provided legal opinions to the Board.[6] One recommended against laying criminal charges against Gayder, but the other two found that, on the facts set out in the briefs, there were reasonable and probable grounds for laying criminal charges in relation to some of the guns. Once it became clear that the California gun could not be the one found in closet 374, the linchpin of the Welland gun charges was gone, but no one in a senior position was told of the problems in that regard, and earlier misstatements were not corrected. It appears probable that the legal opinions of the three criminal lawyers, delivered to the Board on November 5, 1987, might have been quite different had the briefs on which they were based set out the true facts relating to the guns as revealed by the evidence at the Inquiry. In that regard, Mrs. Taylor testified: "If the three legal opinions had supported the Ministry of the Attorney General, we would not have had cause to call for an inquiry."

From the start, the internal investigation was flawed. The chairman of the Board gave the appearance of inappropriate involvement in the investigation. The IIT's view of this is presumably indicated by the submissions filed by the IIT's counsel. In explaining Moody's action in reporting to Mrs. Taylor immediately after returning from the October 15, 1987 meeting with the members of the Attorney General's Ministry, she stated, "However, given the intense involvement of Mrs. Taylor by virtue of her persistent attendances during the Internal Investigation, Moody felt that his action was appropriate at the time ... Moody's average working day would have been entirely consumed by the persistent attendance of Mrs. Taylor."

In addition, as seen above, some of the investigators had a preexisting bias against Gayder. The Inquiry evidence indicates that some started off with a preconceived idea that Gayder was guilty of wrongdoing, and that their task was to produce the proof. Witnesses were at times subjected to cross-examination in what appeared to be an attempt to get answers supporting guilt rather than to obtain all available evidence. No attempt was made to interview Gayder, the subject of most of the allegations, as would surely be the usual course of a normal inquiry. Gayder was thus precluded from supplying explanations which the IIT could have investigated.

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[6] See p. 267.

The chain of command was ignored, with the real control of the investigation lying with the investigators, rather than with their superiors, apparently with the tacit approval of the superiors. The investigators appear to have felt they were not accountable to anyone, a feeling reflected in a rather arrogant attitude toward senior officer's queries, in their manner of questioning some witnesses, and in memoranda issued by some of them which ranged from inappropriate to insubordinate and scandalous.

Such an investigation should never have been an internal one. Many of the problems which shook the NRPF to its core might have been avoided had the corrupt practices unit, recommended in Part II, been available, and been employed to track down the rumours when they first emerged, and to take appropriate action or lay them to rest once and for all. Future avoidance of the kinds of problems and costs resulting from the investigation of the Niagara Force by its own investigation team would more than justify the cost of providing a special provincial unit to handle such sensitive internal investigations.

RECOMMENDATIONS

It is recommended that:

1. *Before an investigation of the Force or its members is commenced, its mandate and its priorities be clearly defined to reflect the real purpose of the investigation.*

2. *Allegations such as those investigated by the IIT should not be the subject of an internal investigation, but should be referred to the special corrupt practices unit recommended at page 190.*

   Pending establishment of such a unit, allegations of corrupt practice within a force should be referred to an investigation unit composed of members of another police force designated by the OCCPS.

3. *There be a force regulation prohibiting police officers from soliciting legal opinions regarding an on-going police investigation from anyone other than a Crown counsel without having first obtained specific authority from the Chief of Police or a senior officer designed by the Chief.*

5 SERGEANT C. VANDERMEER

In the "Notices of Alleged Misconduct" filed in May 1991, a multitude of allegations of possible misconduct on the part of Sergeant VanderMeer were advanced by counsel for eight of the parties appearing at the hearings. On the filing of final written submissions in June 1992, most counsel replied in detail to the allegations against their clients, some of the briefs running into hundreds of pages. I had looked forward to receiving a similar reply from Mr. Rowell, VanderMeer's counsel, to help me assess the weight of the allegations against VanderMeer. Instead, his submission brief totalled only nine pages, and rather than answering the numerous allegations of misconduct, it consisted of what was, in effect, a reiteration of claims of non-disclosure of evidence and bias by Commission counsel. I had previously ruled that these allegations were unfounded.

Most of Mr. Rowell's submissions were based on one incident which was investigated by the Commission investigators, but no evidence was called upon it. The reason is simple: it was a criminal matter, and as such was referred to Chief Shoveller. He had it investigated by members of an outside force, who recommended that no charges be laid.

I reject Mr. Rowell's submissions as being unfounded on all the evidence. It would have been of much greater help to me had I been given some reply to the numerous allegations of VanderMeer's improper behaviour that had been made by the other parties appearing at the Inquiry.

Sergeant VanderMeer is undoubtedly a dedicated police officer, but his prosecutorial mindset makes him a dangerous investigator. The absolute conviction with which he leaps to his conclusions, and the vehemence with which he supports these conclusions in his evidence, has convinced me that this is not caused by "wilful blindness," in the sense that he receives evidence which he knows to be true but deliberately discards it because it conflicts with the conclusion he has already adopted. Rather, I believe that his erroneous judgements are often caused by "honest blindness" in that he psychologically cannot accept evidence which conflicts with the conclusion he has already adopted. What makes this dangerous in a criminal investigator is that his honest belief in an erroneous conclusion renders his court evidence in that regard more credible by giving it the "ring of truth."

As he stated more than once during his cross-examination by various counsel, he is convinced that any criticism of his methods and allegations is simply a matter of "shooting the messenger." It is probable that VanderMeer will go to his grave convinced that his various conclusions arrived at during the IIT investigation were right, and that any conclusions to the contrary are the result of incorrect information, or faulty reasoning, or bias in favour of the alleged wrongdoer, or prejudice against VanderMeer as a rumourmonger, or all of the above. This is illustrated by the fact that although he was aware early in 1986 that both the OPC and the OPP had inquired into the Gayder gun collection, that the OPP had inquired into the Walsh/G.H. connection, that the OPP had inquired into the Typer/C. matter and that the NRPF had twice inquired into the alleged VanderMeer/C. death threats, all without finding any criminal wrongdoing, nevertheless he remained convinced that wrongdoing existed. Although he stated in evidence that he was satisfied with the OPP investigation, he proceeded to bring the rumours about the above matters to the attention of Mrs. Taylor in late 1986 and early 1987, and even to the media. His critique of the Wolski report, which he delivered to the Board, simply reeks of scorn and vituperative sarcasm one would not expect of an unbiased police investigator, particularly when the subject of the sarcasm is a very senior Crown law officer.

The evidence, and the transcripts of interviews conducted and will-says drafted by him, indicate that in interviewing suspects or witnesses, VanderMeer asks "loaded" questions calculated to elicit answers consistent with what he believes really happened, and the predictable answers are then used to confirm, in his own mind, his earlier suspicions. Once he has reached this subjective conclusion of guilt, he, in effect, puts on blinkers and thereafter refuses to be confused by new evidence which contradicts his original thesis.

This can be seen in the manner in which he constructs and edits his briefs or witness will-says. The IIT briefs forwarded to the Attorney General, which he authored, are replete with examples: e.g., IIT brief (vol.1, p.3)"... (Rhodes) had removed several boxes of weapons from Gayder's inner office to a closet identified as Room #374. At the time, Gayder said to Mr. Rhodes that the weapons were at the police station because his wife did not like them at their home." This may accord with VanderMeer's own conclusion, but does not accurately reflect Rhodes's will-say, prepared by the IIT, quoted at page 56 of volume 2 of those same briefs, where Rhodes is reported to have said: "I also moved some rifles. I assumed they were his personal hunting rifles. Sometime during the moving of the weapons, the Chief said: 'I keep them here because my wife doesn't like them around the house.' I am not sure if he was just referring to the rifles or the entire collection." This will-say is also different from the evidence that Rhodes gave at the Inquiry[1] where he said:"... at the time I was picking up the rifles he had said, 'I keep them here because my wife doesn't like them around the house,' and at the time I thought he was just referring to the rifles because I knew he was a hunter and I thought they were his own personal rifles and he kept them there because his wife didn't like them around the house. QUESTION: ... at that time did you have any thought that he was meaning to refer to the entire collection of weapons? ANSWER: No, I just thought he just meant the rifles because that's what I was moving at the time. QUESTION: Did you get any impression from anything else the chief said or did during the time you were moving these weapons that he regarded the entire group of them, all the boxes, as his personal property? ANSWER: No, I did not."[2]

Rhodes was a credible witness. There was no indication that he had changed his story. It would appear that VanderMeer was convinced in his own mind that Gayder had taken possession of all weapons in the closet as his private collection, and was thereby guilty of stealing them from the Force. Then, when Rhodes told him of moving the guns from Gayder's inner office to closet 374, he leapt to the conclusion that this confirmed his suspicions. One or two questions would have revealed that Rhodes was not referring to all the guns, but rather just to the rifles. However, VanderMeer interpreted Rhodes's statement as being consistent with his (VanderMeer's) theory that Gayder had claimed ownership of the closet contents. It seems that, once he has formed a considered opinion, he asks no further questions that might elicit answers that could contradict that opinion.

Thus, it would appear that, upon the discovery of the multitude of weapons in closet 374, VanderMeer formed the opinion that Gayder was guilty of theft from the Force, and subsequent investigation became, to a large extent, an exercise to produce the evidence that would support this theory. As a result, it was assumed that there was something questionable about Gayder's stated intention to establish a Force museum containing weapons, and particularly about Gayder's application to the Solicitor General, and that further examination of the *Criminal Code* was unnecessary. In his brief to the Attorney General, VanderMeer stated that investigation showed that "in accordance with law, Gayder had never applied for permission to exhibit restricted weapons in a museum." He did point out that Gayder had on June 26, 1985, sent a letter to the Solicitor General advising that he was establishing a museum to contain "memorabilia," but he went on to state that the letter did not stipulate weapons, and was addressed to the wrong ministry, since the *Criminal Code* stipulated that only the Attorney General could grant permission to exhibit restricted or prohibited weapons. As explained earlier in this report, a minimal examination of the *Criminal Code* or a simple telephone call would have revealed that the Solicitor General's Ministry was the proper authority, and that had approval of Gayder's application been granted it would have included the right to display restricted and prohibited weapons. It would appear that VanderMeer jumped to a conclusion that accorded with his conviction that Gayder was using the museum as a cover-up for his illegal acquisition of weapons that properly belonged to the Force, and he accordingly saw no necessity of looking beyond the evidence which supported his belief.

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[1] Inquiry transcript, vol. 36 (Feb. 7, 1989):133.

[2] Ibid.:pp. 133-34.

This is further indicated by his interpretation of the evidence of Sergeant Pay, who had been appointed curator of the projected museum in the early 1980s. In the IIT brief, it is stated: "Sergeant Pay, on viewing the weapons found in Room 374, said that the weapons, for the most part, could not have been used for a police museum, as many were duplicates and had no significant historical value; he had already been given weapons for the museum, and these were housed in his own secure storage." This is a skewed version of Pay's interview by VanderMeer and Newburgh on which the above statement was presumably based, in which Pay stated that Gayder had told him that he (Gayder) had some guns that he was going to turn over to the museum, and that there were not that many of those he had seen that he would want. This was not further explored, and Pay's evidence at the Inquiry put a somewhat different light on the matter, when he said: "Chief Gayder, at the time he told me that he had some boxes of guns there, said that he would give them to me at some future time and go through the guns that I could use for the museum, and we'd dispose of the rest."[3] When asked whether there were many of the guns in the closet that he would have wanted to use in his museum, he answered: "I would have taken all the guns for the museum .... And then pick and choose what I could [use] for different displays."[4] He stated that other museum curators had told him to always take anything that was offered to him because "... the more you have for the museum, the better choice you have of what you can put in the museum to show,"[5] and that only about 10 per cent of what is in storage is used for display purposes at any one time. It would appear that VanderMeer did not give Pay an opportunity to make these explanations during his questioning of him for the purposes of the internal investigation, and consequently his belief in Gayder's guilt seemed to be confirmed.

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[3] Inquiry transcript, vol. 25 (Jan. 18, 1989):109.

[4] Ibid.:142

The brief went on to report: "The Internal Investigation Team learned through the interviewing of witnesses that the Force, under the direction of James Gayder, had indeed been involved in the trading and selling of seized and confiscated weapons .... The witnesses also named gun dealers that Chief Gayder had dealt with; one in particular was (name deleted by me, "W" will be substituted). He is a man of questionable character. It has been alleged that he was involved in international gun dealings that were criminal in nature; that he has connections with organized crime figures such as (name deleted by me); and that he had been convicted of weapon offenses."

The intimation was that Gayder had been dealing in weapons with a very shady character. No mention was made of the fact that trading of seized and confiscated weapons to gun dealers had been the practice in the Force for many years before Gayder became Chief, and was done by many other forces. W. gave evidence and stated that while he was in the gun business between 1954 and 1972 or 1973, he had dealt with 90 per cent of the police forces across Canada, including the OPP, the RCMP and the Metropolitan Toronto Police Force, and that some of the forces traded-in seized guns on new weapons or equipment, while some did not. W. sold his business in 1972 or 1973. He had met Gayder, "and subsequently I waved to him, he waved to me, that was about the extent of it. I never had any direct dealings with him." He stated he had never sold or given any guns to Gayder. His evidence that he had only a nodding acquaintance with Gayder, and had dealt with so many forces without his integrity being an issue, contrasted rather sharply with the picture painted by the IIT brief, which could create a very negative impression of Gayder's involvement with a questionable character who had connections with organized crime figures.

As was seen in the sections on Aggressive Witness Interviews and on Conclusions regarding the IIT, VanderMeer apparently started off with a preconception of Gayder's guilt. This is further illustrated by his acceptance of retired Welland Police Chief Wilson's statement that he had never authorized the delivery of any guns to Gayder, in preference to retired Welland Deputy Chief Walsh's statement that he had delivered guns to Gayder in 1969 with Wilson's permission. There was no reason to disbelieve Walsh except that his statement did not fit in with the IIT's conclusion about Gayder's theft of Force guns, and the same type of checking that was done by the Commission investigators (which should surely be routine in the case of such conflict of evidence) would have revealed Wilson's mental infirmity and changed the whole complexion of the IIT report on the Welland guns, and the importance attached to the "California gun."

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[5] Ibid.:143

VanderMeer's inability to accept evidence which contradicts his own conclusions is further illustrated by his statement in his report to the Board: "Investigators determined that one of the so-called Welland weapons, a .32 H & R revolver, had been stolen in Sacramento, California in 1973 during a burglary. Thus this weapon could not have been obtained from the former Welland Police Department in 1971." This conclusion could not have been formed had the conflict between Wilson's and Walsh's statements been approached with an open mind, their relative reliability investigated, and the probability of duplicate serial numbers explored. This unwarranted conclusion, reached in spite of doubts on the part of some members of the Team, played a large part in the IIT submissions to the Attorney General, and subsequently to the Board, that Gayder was guilty of criminal conduct, and those submissions undoubtedly played a part in the Board's decision to demand a public inquiry.

The same attitude is apparent in connection with the Remington Woodmaster rifle episode.[6] Any thorough investigation would have revealed the true state of affairs that, rather than Gayder having the rifle improperly, in fact it had been signed out to him to be carried in his Force vehicle. However, having learned of potentially damaging information against Gayder concerning his possible illegal possession of the rifle, no further investigation was apparently made. As a result, VanderMeer, in preparing the IIT report, gave incorrect and very prejudicial information to the Attorney General and implied that Gayder had thereby committed the offence of theft.

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[6] See p. 67.

The report also gave inaccurate information regarding the Lamonte gun,[7] stating flatly that Lamonte wanted the weapon he had found and turned in to the police returned to him, if the owner was not located. In his evidence at the Inquiry, Lamonte stated that although he had originally asked for its return, when he learned that the gun was of little value, he advised the Force that he had changed his mind. By simply contacting Lamonte and by asking Gayder for his explanation of his possession of the gun, the misleading information given to the Attorney General in the IIT report, implying that Gayder had committed theft in this regard, would have been avoided. Instead, VanderMeer, in authoring the report, leapt to a conclusion more consistent with his own views about Gayder.

Similarly, the report concerning the Chiavarini guns[8] would have been quite different had the interview with Mrs. Chiavarini been conducted without pressure, and would have reflected her later evidence at the Inquiry that she had wanted the guns to be placed in safekeeping. Instead, the report stated: "Mrs. Chiavarini said that she wanted the guns disposed of: she did not intend that they be kept," and that, "Gayder had a market for the guns." It then asked the Attorney General whether the actions of Marvin and Gayder constituted theft.

In the report, it is suggested, that, by having in his possession an M-1 carbine for 12 years before registering it on March 19, 1979, Gayder may have violated provisions of the *Criminal Code*. A phone call to the provincial Firearms Officer would have revealed that there was no requirement to register such a weapon prior to January 1, 1979, and that there could be several weeks' administrative delay between the application to register and the actual registration date due to delays resulting from a flood of registrations following the gun amnesty law of 1978.

In his report, VanderMeer states: "The Ontario Police Commission, in 1984 was privy to similar information as far as Gayder's gun collection was concerned. For some inexplicable reason Ontario Police Commission investigators did not delve fully into the matter." Perhaps because of his preconceived conclusions about Gayder's guilt, the realization that the OPC did not consider Gayder's actions to be illegal failed to flash a warning light to VanderMeer that his allegations of Gayder's wrongdoing might be flawed.

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[7] See p. 44.

[8] See p. 229.

In connection with the Reintaler Knife,[9] the report stated categorically that the court had ordered the weapon confiscated and destroyed. This was not correct; the court record filed with the report disclosed no such order. Apparently the IIT and VanderMeer did not check this, but proceeded to ask the Attorney General whether, on the misleading facts set out by them, Gayder had committed theft.

The same inflexible attitude is demonstrated in regard to the tea set,[10] where a proper and unbiased investigation would have revealed that there were no reasonable grounds for asking the Attorney General of the province whether the situation amounted to theft on the part of Gayder. Even after the Attorney General advised that there was nothing improper, VanderMeer insisted in his supplementary report to the Board that Gayder had committed an offence.

Again, in relation to the trailer hitch,[11] the very way in which his question to the Attorney General was slanted indicates bias, namely: "Considering the fact that Gayder used the taxpayer's money for his own use and benefit ... did he commit the offence of Breach of Trust?" Later, in his report to the Board, VanderMeer agreed with the Attorney General's conclusion that the circumstances did not disclose an offence, but by then the very accusation would already have done its harm.

In assessing VanderMeer's role, it must be borne in mind that each of these questions about the criminal liability of the former Chief of Police was directed to the province's chief law enforcement officer, and was preceded by a recital of stated facts, many of which were proven by proper investigation to be untrue.

Although each occurrence outlined to the Attorney General concluded with a question whether such conduct amounted to a breach of the *Criminal Code*, it was clearly implied that the IIT and the author of the report had already concluded that it did, and this is confirmed by the outrage exhibited by the some members of the IIT and Board over the Attorney General's refusal to recommend prosecution, to the extent of requesting an investigation of members of the Attorney General and Solicitor General ministries.

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[9] See p. 82.

[10] See p. 78.

[11] See p. 81.

CONCLUSIONS

I have gone into great detail to outline the problems I have found with Sergeant VanderMeer's methods and attitudes, because I am conscious of the seriousness of the recommendation I am about to make.

Sergeant VanderMeer had the central and controlling role in the IIT and its badly flawed operations, which played a large part in the resignation, under pressure, of the Chief of Police and the greatest upheaval in the 16-year history of the NRPF. The "loss of public confidence" in the Force referred to in the Order in Council issued to the Commission was contributed to by the number of rumours and allegations of impropriety, and even corruption, that the investigative techniques and slanted reports of the IIT engendered both within the Force and in the public.

Sergeant VanderMeer is an intelligent person, but is quite prepared to ignore the chain of command, which is so important in the proper administration and operation of a police force. Instead, he is prone to apply his own standards in his approach to the obligations that arise in administering justice in an even-handed manner. He does this out of a desire to see justice done as he thinks it should be done. Unfortunately, because he is inclined to leap to conclusions that accord with his own subjective impressions early in an investigation, and then ignore or misconstrue later evidence which does not conform to his earlier conception, he is not always correct in his view of what is just and even-handed, however well-intentioned he may be. As we have seen, this is very dangerous, since it could result in a denial of justice and the conviction of the innocent.

On October 2, 1989, VanderMeer sent a memorandum to Deputy Chief Kelly complaining of the unfair criticism of one of the former civilian members of the IIT for breaching the chain of command by reporting to Sergeant VanderMeer, long after the IIT had been disbanded, her suspicions about a breach of security by another employee, instead of reporting to her own superior. Sergeant VanderMeer's intemperate comments are very revealing as to his attitude to the chain of command ; "inept, incompetent and perhaps corrupt police management team," and, "What a school-yard bully! What a disgrace! What a sniveller! What a spoiled adolescent! I feel nothing but scorn and contempt." Following a lengthy quote from "Peter's

Principle" about superiors rising to the level of their own incompetence, he went on: "What an apt description of the management techniques used by our Force." The incident led to Chief Shoveller issuing a Routine Order reminding all Force members that the IIT had been terminated with the appointment of the Commission of Inquiry, and that no parallel investigations were to be conducted. VanderMeer's irreverence toward authority is further indicated by the fact that in his notes he referred to Chief Gayder as "the Thief of Police" and to Gayder's secretary as "the Queen Bee."

The Force has gone through a traumatic period of self-examination and self-doubt in the last few years, particularly during the investigation by the IIT and by this Inquiry, and it is to be hoped that the revelations at the Inquiry that most of the allegations had little, if any, foundation may act as a form of catharsis to purge the doubts and lack of confidence engendered by years of rumours and dark gossip. Sergeant VanderMeer made it clear during the Inquiry hearings that he is still convinced of the truth of much of the substance of the allegations of misconduct, and his action in carrying on private investigations of his own, such as that concerning D.B., paralleling the Commission investigations, despite orders not to, persuades me that, if he is left in an investigative capacity, rumours and allegations of corruption within the Force will continue to circulate. This is not a matter of "shooting the messenger" but of neutralizing a messenger who bears inaccurate news of his own making. It is a matter of preventing a very dogmatic investigator from causing further tension and uneasiness within the Force, and possible harm outside the Force, by his inflexible investigative style. I am satisfied that this can be accomplished only by transferring him to a position where his talents may be of benefit rather than a liability.

RECOMMENDATIONS:

It is recommended that:

1. *For the above reasons, Sergeant VanderMeer be transferred to a position within the Force where he will not have, or be responsible for, investigative duties.*

6 THE CALL FOR AN INQUIRY

On October 5, 1987, Mrs. Taylor wrote Deputy Attorney General Douglas Hunt, under the heading "Re: James Gayder," setting out the history of the IIT investigation, pointing out her concerns about the Charter of Rights provisions regarding unreasonable delay in laying charges, and quoting a Supreme Court of Canada decision decrying the necessity of "freeing the guilty" because of such delays. The letter stated that she had been informed by Sergeant VanderMeer that he had reasonable and probable grounds to believe Mr. Gayder had committed criminal offences, and referred to a "Crown Brief" that had been prepared "which lends itself conclusively to the determination that a prosecution against Mr. Gayder could be successfully pursued. This view is shared by Chief of Police Shoveller. This situation has in my view passed the state of urgency and has now reached crisis proportion ... I am concerned as well with the influence on the ultimate and inevitable prosecution of Mr. Gayder."

In a memo to Chief Shoveller of the same date, Mrs. Taylor proposed three courses of action: (1) Continue to wait and risk a charter defence; (2) Give the Attorney General's department until noon on October 9, to give its opinion on the proposed charges, then call an emergency meeting of the Board at the request of the Chief of Police and consider the opinion before ensuring Sergeant VanderMeer that he can proceed without fear of sanction from the Chief of Police; (3) That without waiting for the reply from the Attorney General, the Chief inform Sergeant VanderMeer that "he can proceed to discharge his duties as he sees fit, bearing in mind Section 450[1] of the *Criminal Code of Canada*, with no fear of sanction other than of course a potential civil suit for malicious prosecution. I am informed that Sergeant VanderMeer is willing to assume responsibility and costs for any subsequent civil suit framed in a cause of action of malicious prosecution." The memo suggests that the Attorney General may be reluctant to assign a Crown Attorney to prosecute the charges, "given (1) the history of this matter; and (2) the involvement of those in senior positions of both the Ministry of the Attorney General and Solicitor General." It went on to state that, without suggesting a private prosecution, perhaps the appearance of justice in general and impartiality in particular would be best served by the Niagara Regional Police assuming full responsibility for the matter, including choosing a counsel who was a Crown Attorney or part-time Crown Attorney "who would prosecute the charges."

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[1] Section 450 covers "Arrest without Warrant".

Shoveller testified that he was "more than a little upset" on receiving the memo, and upon discussing it and the letter with Mrs. Taylor, he told her that it was "totally and absolutely outside of her area of responsibility." He refused to adopt any of the alternatives suggested in the memo.

The next day VanderMeer sent a long memo to Moody questioning the motives behind the delay by Hunt in delivering the Ministry's recommendation on the Gayder briefs, stating that "We suspect that Mr. Wolski's motives may be other than what one would reasonably expect .... Because of Mr Wolski's indecisiveness ... I sought the advice of two former Crown Attorneys ... both concluded that in most instances, particularly as it related to the weapons and the tires, sufficient evidence existed to successfully prosecute and convict James Arthur Gayder." The memo proceeded, for some obscure reason, with what can only be characterized as a litany of speculative and very scurrilous gossip about the careers, motives and extremely personal lives of some members of the Ministry, gleaned from "a source who is privy to the inner workings and personalities of the Ministry of the Attorney General."

Somewhere around this time VanderMeer and Mrs. Taylor met Moon in VanderMeer's home, apparently seeking Moon's assistance in calling for a public inquiry. Moon testified that he told them: "I said 'You've got Shoveller in as Chief. He is the man you want. You fought to get him in ... why don't you let bygones be bygones? ... All these things are small, and you have got nothing big and sexy. You just don't have it. Queen's Park isn't going to give you a public inquiry.' And they were putting it to me, you know, ' Well, if they aren't going to charge Gayder, you are our last chance to try and force an inquiry.' I said,'.... Yes, I will write a legitimate story. But I don't think you've got it.'.... They felt it was in the interests of the police force and the community to have a complete airing about all the stuff that was being discussed in the community ... and let people know the truth whatever the truth might be."

On October 15, 1987, at a meeting in the offices of the Ministry of the Attorney General, Chief Shoveller and members of the IIT were advised by Douglas Hunt that the Ministry was recommending against the IIT's submission that criminal charges should be laid against Mr. Gayder, and they were given a copy of Wolski's memo examining the allegations which came to the same conclusion. This resulted in what Moody described as a "very heated" discussion between Shoveller and Hunt. Rattray, a member of the IIT, who had not been to the Toronto meeting, testified that on their return to headquarters, those who had attended were "livid," and there were claims of political interference. VanderMeer immediately telephoned Mrs. Taylor to report, as did both Shoveller and Moody later that evening.

The following morning the IIT met with Shoveller and went through Wolski's report. Sergeant VanderMeer began preparing a brief for the Board with the assistance of a lawyer, rebutting the Wolski report point by point. This was the brief that was later released by VanderMeer to Moon of the *Globe and Mail*. Mrs. Taylor was present for at least a portion of the meeting. She received a copy of Wolski's report, and her notes contained three pages of hand-written comments on the report. On October 22, Shoveller presented the Board with the IIT brief summarizing Wolski's report and rebutting his conclusions that Gayder should not be charged. The tape of the meeting indicates the Board discussed requesting a public inquiry as an alternative to the laying of charges. Shoveller stated that, in his view, offences had been committed. The "museum defence" was discussed, and Shoveller stated that he was not aware of any intention to "form, or set up, a weapons museum." The Reintaler knife was discussed, and Mrs. Taylor referred to it as "a really important, a very important point" because of the court order for its destruction. It is apparent that the IIT's faulty investigation of these matters influenced the Board. The Board discussed what further steps should be taken, and decided to seek independent legal advice. It instructed Police Board counsel to retain three criminal lawyers to examine the IIT briefs, and deliver an opinion as to whether there were grounds to lay charges against Gayder. The trading of firearms, which had been condemned by the IIT, was discussed and Shoveller stated there was no record of these transactions being authorized by any Board since the inception of the Regional Force. Mrs. Taylor referred to the practice as "obscene" and stated "This has to go public."

According to the tape, this prompted a remark from one of the longer serving members, William Dickson, who had been absent on vacation at the time of Gayder's suspension: "... before we proceed any further ... we better make sure that we get everything dotted and crossed before we go with this, because I think, as far as public opinion is concerned, and I have to say this honestly, we've got our pound of flesh. This Board has got its pound of flesh. Do you want the whole carcass?" During the lengthy discussions, there was no mention of infiltration of the Force by organized crime, one of the matters of concern repeatedly referred to in press releases issued by the Board during the Inquiry hearings, decrying the delay in reaching that phase of the Inquiry. The discussion revolved around possible charges against Gayder.

That day, Mrs. Taylor retained, as counsel for the Board, one of the lawyers whom VanderMeer had referred to in his memo to Moody of October 6. He was instructed to carry out the Board resolution directing the retaining of three criminal lawyers to prepare separate opinions on the IIT brief. The letter of retainer, which Board counsel sent to the three selected lawyers on October 27, advised that their identity would not be made known, and that, since Chief Shoveller had decided that no criminal charges would be laid, their opinion would not be used to support any prosecution of Gayder under the *Criminal Code*. The letter, a copy of which was filed with the Board, went on: "Further, you should know that our client may be urging the Province of Ontario to call for an Inquiry into the activities of James A. Gayder .... Although I cannot conceive of a situation wherein the focus of an Inquiry, should it be ordered, would go beyond an analysis, investigation and evaluation of Mr. Gayder's activities, neither we nor our client would have any control over the parameters." It is thus apparent that the Inquiry then contemplated by the Board was to be an investigation of ex-Chief Gayder, rather than one into the administration and operation of the Force.

Sometime following the October 22 Board meeting, VanderMeer delivered to Moon a copy of the IIT critique of the Wolski opinion, on condition he would not do a story on it until authorized to do so by VanderMeer.

During this period, the IIT was continuing with its investigation of Gayder and his guns, particularly the Ross guns. It was not until November 3 that Ross was located and interviewed. On November 5, the Board met to consider the opinions received from the three lawyers, and VanderMeer was present to answer questions about Gayder's guns. A resolution was passed that the Board deliver to the Solicitor General a request in writing "for a public inquiry into allegations of improprieties involving Niagara Police Force officers as investigated." This would seem to contemplate an inquiry into only those matters that the IIT had investigated.

A letter to the Solicitor General was prepared formally requesting a public inquiry, and outlining the background leading to Gayder's suspension. It refers to the situation having reached "crisis proportions in the last few months due largely to allegations involving James A. Gayder," that, "On February 17, 1987, an investigation into alleged improprieties by Mr. Gayder during his tenure as a peace officer was commenced" and that after Gayder's resignation "the investigation which was focused on Mr. Gayder continued." The only matters referred to are allegations against Gayder.

VanderMeer and Melinko delivered the letter to the Solicitor General's private secretary on November 6, and on November 8, Mrs. Taylor and VanderMeer met local MPP Jim Bradley to urge his support for a public inquiry. On November 13, the Solicitor General wrote Mrs. Taylor stating that a decision as to ordering an inquiry was premature pending a decision by the Chief of Police as to whether her charges would be laid. The letter pointed out: "You have also indicated that "we" disagree with the advice as to the absence of reasonable and probable grounds. I find these statements to be somewhat troublesome in that they appear to convey a misunderstanding as to the separate and distinct function of a governing authority such as your Board and the Police Force itself. Put simply, I do not feel that it is appropriate for the Board to be involving itself as to the appropriateness or inappropriateness of charges in any specific case. To do so is to cross a dangerous line between an operational independent police force, free from political and bureaucratic interference and one that is subject to the day-to-day direction of a combined elected and appointed civilian authority. While I am absolutely convinced (as are the police themselves) that the police must remain generally accountable to a civilian authority, this is not to be confused with direction or indeed involvement on a case-by-case or issue-by-issue basis. To confuse such differing responsibilities will lead to allegations of manipulation of the police." The letter then stated that a decision on calling an inquiry was premature since it was up to the Chief as to whether to lay charges.

By a memorandum, dated November 15, Shoveller advised Mrs. Taylor that in view of the Attorney General's recommendation after reviewing the IIT briefs, he would not be laying charges. On that day, a Sunday, the Board held an emergency meeting with Shoveller and the Board solicitor. It is apparent from their minutes that the Board was unhappy about the "knuckle rapping" that it had received from the Solicitor General. A motion was passed directing Shoveller to reconsider his decision not to lay charges. The Board endorsed Shoveller's intention to make a public statement "with respect to allegations of improprieties by certain individuals while they were members of the Niagara Regional Police Force and the concomitant consultations including those with the Ministries of the Attorney General and Solicitor General of Ontario." At that time, the only specific allegations of improprieties the Board had, and the only ones referred to in the correspondence with the government ministries, were those against Gayder. The Board also requested Mrs. Taylor to issue a public statement. That day a Board press release was issued summarizing the internal investigation and the Solicitor General's response to the request for a public inquiry, and stating that the Chief had been asked to reconsider "the entire matter."

On November 18, during question period in the legislature, Mel Swart referred to the Solicitor General's letter to the Board rejecting a public inquiry, and mentioned a possible "coverup." He added: "Is not this the real reason she does not want a public inquiry? The trail of guilt might lead right up to her Ministry."[2]

On November 19, the *Toronto Star* published an article about the IIT five-volume report and the call for a public inquiry, followed by a long article on November 23, with photographs of Gayder, Shoveller and Mrs. Taylor. Shoveller was quoted as saying the report was "staggering," and if criminal charges were laid, there would be no need for a public inquiry.

On November 23, the Board met and passed another resolution requesting the Solicitor General to order a Judicial Public Inquiry "into allegations of improprieties within the Niagara Regional Police Force and the process by which such allegations were addressed." It also received a draft six-page press release, prepared by Shoveller, in which he summarized the IIT investigation without identifying those being investigated. He stated that although it was his view that the evidence supported the laying of criminal charges, in view of the opinion of the Attorney General's Ministry that there were not reasonable and probable grounds to believe that any offence had occurred, "I then exercised my independent discretion in concluding that charges should not be laid." He referred to the Board's efforts to obtain a public inquiry, and indicated his support.

The press release was approved by the Board.

That evening, Mrs. Taylor met with VanderMeer at her home, and she expressed her frustration at the delay in calling an inquiry. She testified that VanderMeer told her "The presses are rolling" and that she was "in shock" and asked him what he had done, but he did not reply. The next morning, November 24, the *Globe and Mail* published Peter Moon's front-page story about the IIT and Gayder's guns. VanderMeer freely admitted he had given the material to Moon because he believed a public inquiry was necessary. That day, Mel Swart referred to the article in the legislature, and again called for an inquiry.

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[2] Hansard November 18, 1987 L-1500-1 [found in Taylor's notes vol. 6 p. 647].

At 9 a.m. the next morning, November 25, the Board's resolution requesting a "Judicial Public Inquiry" and Shoveller's press release, together with a covering letter advising that both documents would be made public that day, were delivered to the Solicitor General by Rattray. Later that morning, Mrs. Taylor read the letter to the Solicitor General, and released it and Shoveller's press release to the media.

That afternoon, November 25, the Solicitor General announced in the legislature that a public inquiry into the NRPF would be conducted.

On December 1, the Administrator of the Niagara Region Police Association wrote the Solicitor General: "It is the belief of the Executive of the Association that the Inquiry you have directed, in order to restore public confidence, must address all of the operations, administration and affairs of the Force, and in addition should examine how the Boards of Commissioners, including the present Board of Police Commissioners, have conducted themselves .... If the Inquiry addresses only the firearms found at the Police Station or the hiring practices of the Police Force, it is our view that little or nothing will be accomplished with respect to the restoration of confidence in this Force." Gayder's counsel wrote the Solicitor General a letter, dated December 1, urging that the terms of reference be sufficiently broad "to include a full examination of the current senior management and administration of the Force, and especially of the conduct and roles played by the Chairman of the Board and the current Chief of Police."

On December 2, Mrs. Taylor and Board counsel met with the Solicitor General and her deputy regarding the terms of reference of the Inquiry, and emphasized that the Board wanted them to include an inquiry into the Ministries of the Solicitor General and Attorney General. On December 12, Board counsel wrote the Solicitor General on behalf of the Board setting out, seriatim and in specific detail, suggested terms of reference and the type of judge, counsel and investigators the Board would consider acceptable.

When, on February 17, 1988, the Solicitor General announced the terms of reference, Mrs. Taylor wrote taking strong exception to the fact that "public authorities" were not included as subjects of the investigation. The Solicitor General replied on March 9, that "The focus of the public inquiry is the operation and administration of the Force rather than an excursion through the operation of a myriad of public agencies that may have had dealings with the Niagara Regional Police Force." Board counsel replied on behalf of the Board by letter, dated March 17, 1988, which clearly indicated that it was the Ministries of the Attorney General and the Solicitor General that the Board wished to have included in the Inquiry, and named individuals in the ministries it would expect to be examined at the hearings. It was apparent that the Board considered that the Inquiry was its Inquiry, rather than a completely independent Inquiry. This perception, and the resentment when it was realized that this was not the way in which the Inquiry was being conducted, plagued the proceedings throughout the Commission hearings.

On March 25, 1988, the Order in Council was passed appointing this Commission and setting out the terms of reference included in the appendix to this report.

The first session of this Commission, an administrative hearing, was held on June 27, 1988. At that time, Board counsel made an application to extend the terms of reference to include investigations into the NRPF by "any public authorities," rather than only "other police forces or police agencies," intimating that the conduct of the Attorney General's Ministry in recommending that charges not be laid against Gayder should be examined and stating that "allegations may go to the integrity of some decisions that have been made by government agencies." He described this as "the most important aspect" and "the most grave concern" to the Board. I allowed him additional time to file a supplementary brief, and on July 6, delivered my ruling, refusing the application for the reasons set out in my ruling.[3]

In my ruling, I recommended to the Solicitor General that several parties to whom I had granted standing should be funded, or partially funded, by the province because they would not otherwise be able to afford legal representation. In all, during the course of the Inquiry, 22 parties were granted standing, and 16 parties were granted funding.

It was not until the middle of October, 1988, that the recommendation regarding funding was approved by the Solicitor General, with legal fees to be paid out of the Commission's budget at the same rate as that fixed for Legal Aid. At the hearing of October 17, counsel for Gayder advised that he could not continue to represent Gayder at legal aid rates, and a one-month adjournment was granted to allow Gayder to retain new counsel. Board counsel strenuously objected to the adjournment, submitting Gayder should be able to proceed without counsel.

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[3] Appendix I.

The Board had also applied for funding by the Commission. I ruled, however, that the Board did not come within one of the five criteria I had established for qualification for funding, namely: does the applicant have sufficient resources to generate the funds required to adequately represent its interest? This ruling was the subject of protests and press releases by the Board and Regional Council throughout the hearings. Eventually, upon Mrs. Taylor advising me by a long letter, dated April 25, 1990, that the Board had exceeded its budget for legal expenses, had been refused further funds from the Region, and would be unable to continue to finance legal representation at the Inquiry, I arranged through the Solicitor General for the payment to the Board of $250,000 which was taken out of my Commission budget. Approval of the payment took almost a year, during which the Board continued to be represented by its counsel. It was therefore rather surprising to learn that, shortly after the payment was made, the Board commenced, with outside counsel, a very expensive and unsuccessful appeal of certain Commission rulings, which must have consumed a large part of the new funds.[4]

The Commission's first evidentiary hearing was held on Monday November 14, 1988, and the main body of evidence concluded on November 20, 1990. Due to the various motions and judicial applications that followed, final submissions were not delivered until July 15, 1992.

I am satisfied that the main purpose of the Internal Investigation instituted following Gayder's suspension was to obtain evidence of criminal activity on Gayder's part in order to justify his removal. The IIT investigation centered on Gayder. The IIT briefs presented to the Attorney General were referred to as "the Gayder briefs" and dealt almost exclusively with Gayder. Board counsel's letter briefing the three criminal lawyers who were to give an opinion in relation to the criminal charges against Gayder made this clear. It stated that there might be a public inquiry, and that counsel could not conceive that it would deal with anything but Gayder. Mrs. Taylor's memo to Shoveller of October 5, 1987 voiced her great concern, and that of VanderMeer, about the delay in charging Gayder, to the extent that she stated VanderMeer was prepared to lay the charges even at the risk of being sued for malicious prosecution. She proposed hiring a part-time

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[4] See p. 293.

Crown Attorney to prosecute the charges if the Attorney General was unwilling to do so.

Mrs. Taylor's October 5, 1987 letter to the Attorney General was about her concern that the delay in delivery of the Attorney General's recommendations concerning the laying of criminal charges against Gayder, might afford Gayder a defence based on unreasonable delay. None of the communications to the Attorney General indicated an interest in anything but Gayder's suspected wrongdoing.

When the Attorney General's recommendation failed to produce charges against Gayder, instead of gladly accepting that as an official determination of an unpleasant episode in the Force's history, and as an opportunity to start afresh, Mrs. Taylor commenced a vigorous campaign for a public inquiry. VanderMeer supported this campaign by turning over the IIT's flawed critique of the Wolski opinion to Peter Moon for publication in the hope that it would pressure the Attorney General or Solicitor General to call an inquiry into Gayder's suspected criminal activities. The expectation was that the Inquiry would establish Gayder's guilt, and thus justify the "messy manner" in which he had been removed.

It is apparent that, had the Attorney General recommended criminal charges against Gayder, the Board would not have called for a public inquiry. The Board had not been fully briefed by Mrs. Taylor, who had already decided that a public inquiry was necessary. Thus, having received the Ministry's negative opinion, as presented in the IIT's summary brief, and not being aware of the flaws in the IIT briefs, it must have appeared to the Board that a public inquiry was the appropriate course to by-pass the Ministry's recommendation. On the evidence as they knew it, they became so convinced of Gayder's manifest guilt that they believed that anyone who disagreed, including the Attorney General's Ministry, must be doing so for an improper purpose.

In the light of all the evidence, I cannot accept Mrs. Taylor's testimony that she had not intended that the public inquiry should concentrate on Gayder's alleged misconduct.

The Board, of course, had no mandate to obtain legal opinions as to whether criminal charges should be laid against anyone. That is a matter exclusively within the jurisdiction of the police. Instead, by meeting with a member of the IIT in her home, by attending IIT meetings, even if only for coffee as she claimed, in spite of other evidence that her participation was "intense," by meeting with a politician and a journalist with VanderMeer, and joining with VanderMeer in pushing for a public inquiry, Mrs. Taylor blurred the distinction between the Force and the Board. The distinction is important; the Board is intended to provide an independent civilian body to make policy decisions for the Force, and it must maintain some distance between itself and the Force so that it may have the perspective to perform its function. By involving herself too closely with the operational side of the Force as represented by the IIT, Mrs. Taylor made it difficult for the Board to make a genuinely independent assessment of the evidence justifying a call for a public inquiry.

Her actions in enlisting the aid of the media in the call for an inquiry, and VanderMeer's in leaking confidential (and flawed) information to the media, did substantial harm to the reputation of the Force and public confidence in it.

The questions the IIT briefs posed to the Attorney General asked whether the conduct alleged constituted a specific criminal act. Wolski's usual reply was that no reasonable and probable grounds existed to support a criminal charge. In his report, both written and oral, to the Board disagreeing with almost all of Wolski's conclusions, VanderMeer strongly criticized Wolski for wrongly considering whether there was a reasonable likelihood of successful prosecution in coming to his conclusion. This same criticism was repeated at length at the hearings by both VanderMeer and his counsel, submitting that the IIT was right in its conclusions that criminal charges should have been laid.

It is difficult to understand the IIT's (and the Board's) obsession with "reasonable and probable cause" justifying the laying of a criminal charge, to the point of disregarding the probability of the charge being dismissed. Their view was that criminal charges should be laid (with all the attendant publicity) and only then should "prosecutorial discretion" be considered. Once a criminal charge against Gayder was laid, regardless of the outcome perhaps months later, the harm would have been done. Not only would Gayder's reputation have been shattered, but so also would have been the public's confidence in the Force, already damaged by the events of the previous spring. The only explanation seems to be that VanderMeer and Mrs. Taylor were determined to attempt to prove wrongdoing on the part of Gayder, in order to justify his suspension and subsequent resignation, and persuaded the Board to support the efforts to obtain an inquiry for that purpose.

There seems to be no other explanation for the reaction of the Board to the conclusion in the report of the Ministry of the Attorney General that there were not sufficient grounds to lay criminal charges.

Following receipt of that report, had the Board been truly interested in the well-being of the Force, the report provided them with the opportunity to issue a press release emphasizing the excellence of the NRPF, and pointing out that the Ministry of the Attorney General, the highest law authority in the province, after examining voluminous reports prepared by internal investigators following months of intensive investigation of all the rumours, had found that no criminal charges should be laid against ex-Chief Gayder or any Force member.

Moreover, at that point, had the Board been prepared to say: "Gayder made mistakes, we made mistakes, now let's forget the past and apply the lessons learned to correct administrative and organizational defects for the good of the Force", a great deal would have been accomplished, and possibly this Inquiry, with its tremendous cost to the public and damage to morale and reputations of many people, might have been avoided.

However, once the Board issued a press release disagreeing with the conclusions of the Ministry of the Attorney General and calling for a public inquiry (and the flawed IIT report was leaked to the press), a public inquiry to investigate the published allegations became inevitable.

The obsession with proving before the public that the IIT and the Board had been right, and the Ministry had been wrong, had a very unfortunate effect on the course of the Inquiry. Had the Inquiry been able to look at the defects in administration only with a view to proposing corrections, instead of some of the parties being more interested in proving misconduct on the part of other parties and alleging a cover-up if they were not allowed to do so, substantially more than half the Inquiry's hearing time and cost could have been saved, with constructive rather than destructive results.

The many adverse rumours circulating about the Force, followed by the IIT's internal investigation, caused so much damage that a public inquiry had to be called, but the manner in which the inquiry was pursued unnecessarily caused further damage to the Force's public image.

7 ROLE OF THE BOARD

(A) THE BOARD – 1970 to 1987

The role of the Niagara Regional Board of Commissioners of Police is referred to in four of the Commission's terms of reference. Victor MacDonald, of Queen's University, prepared a report on that subject for the Commission's November, 1989 workshops.

The first Niagara Regional Board of Police Commissioners, appointed in January, 1970, at the inception of the NRPF, consisted of a county court judge, a lawyer and a businessman appointed by the province, and two members of the new regional council appointed by the Council. As earlier indicated, true amalgamation of the 11 local police forces was not easy to achieve. There was some reluctance on the part of some of the former local municipalities to accept a Board which, by its statutory composition, could not accommodate representatives from each of the 11 former municipalities. There also was concern that their Police Force was administered from another municipality.

The early years of the Force were remarkable for the continuity of the membership of the Board. There were few changes in the regional membership, and the original three provincial appointees remained in office until 1984. In 1984 two of the latter were replaced, and the third was replaced in 1985. All three of these provincial appointees were replaced in 1986, and again in 1992.

During the early years, extending into the 1980s, it appears that the Board, recognizing the Chief's administrative problems in integrating the new Force, saw its role as primarily supportive of the Chief. Disagreements with the Chief were fought out in *in camera* sessions, and since many of the meetings during the Force's formative years involved personnel, Force structure and political conflicts within the region, there evolved a tendency to hold a large proportion of them *in camera*, to the frustration of the media and some citizens.

Chief Shennan, a St. Catharines native, retired in 1977, and Donald Harris of Niagara Falls was appointed Chief. Chief Harris was seen to be relatively autocratic, and leaned toward the military approach to police administration. Conflicts between the Chief and the Police Association grew as Harris tried to achieve more control of the decentralized Force, and some officers felt they had not been treated fairly in jobs and promotions during the integration process. Meanwhile, the Board remained supportive of the

Chief, despite some conflicts with him. The Board took its duties very seriously, and spent a great deal of time on police matters, but kept relatively distant from internal Force management.

Deputy Chief James Gayder, of St. Catharines, succeeded Harris as Chief on January 1, 1984. Gayder was seen as affable, easy-going and less demanding than Harris. He established a better working relationship with the Police Association and with some of the area municipalities and was popular with most of the Force members. However, the investigations by the OPC in 1984, and by the OPP in 1985 and 1986, indicate that some sloppy management practices had crept into the administration over the years. A change in the make-up of the Board and in the concept of some of its members as to the Board's role, as a result of the 1986 provincial appointments, set the stage for the disruptive events that swept the Force in early 1987.

The three new members appointed by the province in January 1986 were, Denise Taylor, a former member of St. Catharines city council, James Keighan, a former mayor of Niagara Falls, and Robert Hanrahan, Dean of Administrative Studies at Brock University. None had any background in policing matters. Although there were educational programs for new commissioners offered by the OPC, the new members did not attend them, but they attempted to educate themselves by reading literature made available to them. William Dickson, a region appointee to the Board for several years, was elected Board chairman, and Mrs. Taylor was elected vice-chairman. Mrs. Taylor took a "hands on" approach to her new job, and began meeting with local political and legal figures to obtain their views of the Force, arranged to have personal tours of the police facilities and accompanied an officer on his cruiser patrols.

The entry upon the policing scene of Mrs. Taylor, an intelligent, hard-working, extremely active person, naive about police management, but with recent experience in the rough and tumble of local politics, and perceived by many to be ambitious, was bound to have repercussions. Former boards were seen by her as being "old boys' clubs." She actively pursued a policy of "openness and accountability," contrary to the existing procedures for the handling of sensitive Board business. Friction developed between some other Board members and her over her aggressive style and her willingness to go to the media without obtaining Board authority. As an example, Mrs. Taylor issued a press release, on Board letterhead, dated May 28, 1986, which commenced: "Once again, it is necessary for me to bring to your attention the fact that this Commission has conducted important business behind closed doors (May 26). The purpose of this meeting was to discuss the tendering of a major addition to the Force's computer system. This item is listed in the Capital Budget in 1987 and 1988 and totals $2.37 million. Both prior to and during the meeting, I challenged the need for it to be held *in camera*.... I find that some of my colleagues have an obsession for secrecy. It is time for this to end. I am therefore reintroducing my motion to restrict *in camera* items at the next meeting of the Commission." Apparently this led to the Board seeking legal advice as to the right of a Board member to use the Board letterhead. Nevertheless, Mrs. Taylor's conscientious approach to her duties must have impressed the other Board members, since, a year after her appointment to the Board, she was elected chairman.

Even before becoming chairman of the Board, during her first year Mrs. Taylor had developed a high profile. She met with police officers to learn about the operation of the Force, and in the process listened receptively to their criticisms. Having proved to be approachable, accommodating and uncritically sympathetic to complaints, she came to be known as the repository to whom complaints should be addressed. From there she progressed to accepting "information," rumours and allegations not only from Force members, but from non-Force characters of questionable reputation and credibility who had an "axe to grind" and who, for their own purposes, suggested that there was corruption at senior levels of the Force. Virtually all this "information" was hearsay, but because she heard it from more than one source, Mrs. Taylor became alarmed. The only Board member to whom she communicated any of this information was Hanrahan, who told her he had heard some of the same things, but had not taken them seriously. Apparently misunderstanding the collective role the Board should play in such matters, and not feeling she could trust some of the members, she did not inform the other Board members.

Consequently, not having all the information, the Board was unable to play an enlightened role during one of the Force's most critical periods, and was placed in a position of making crucial decisions on short notice, relying on a minimum of information. This was the case in connection with the charges Mrs. Taylor laid against Gayder without prior consultation with the Board. The charges having been laid, the other Board members were advised by the solicitor Mrs. Taylor had brought to the meeting that they had no alternative but to suspend the Chief. As one Board member said: "I didn't know she was going ahead with it ... I was hoping to God that she had enough, you know, to back up what she had done."

Gayder's suspension and consequent resignation was followed by the events described earlier in this report, in which Mrs. Taylor took an active role in promoting the investigation of Gayder's conduct by the IIT both at the Force level and in contacts with the media and political figures. When that investigation did not result in criminal charges, she led a campaign for a public inquiry which, at least in part, was intended to inquire into the reasons why no charges were recommended.

Mrs. Taylor obviously believed in a proactive approach. She interviewed Force members, local lawyers, a Crown Attorney and Pinocchio about possible misconduct within the Force, obtaining both generalized and specific allegations of improprieties and criminal conduct, mostly based on second or third-hand information. By acting on her own, Mrs. Taylor became involved in the rumourmongering process. The proper course would have been to involve the Board, so that it could decide what, if anything, should be done with it. Normally, worthwhile information would be passed on to the Chief, as the head of the law enforcement authority. Neither the chairman nor the Board are in the business of investigating such matters. If the Chief was suspect, then it is essential that the Board, which appoints the Chief, be given the information, so that it could make an informed decision as to the best course of action, such as consulting the OPC about calling in an outside force to investigate. The Board, not one of its members, must make such decisions. Certainly a Board member should not be consulting with a member of the Force on such matters.

During this time, the Board chairman was meeting from time to time with media representatives, Clarkson of the *Standard*, McAuliffe of the CBC, and Moon of the *Globe and Mail*, about allegations of misconduct in the Force. Pinocchio was present at a meeting with Moon so that Moon could hear his allegations. Such information, particularly when it consists of unproven allegations, should not be provided to the media. If guidance is being sought, it should be sought from the Board, or, if the Board so decides, from a law enforcement body.

Mrs. Taylor did consult the Solicitor General on January 15, 1987, but personally, not as an official representative of the Board. Her letter to the Solicitor General after the meeting was on her personal letterhead, not that of the Board. She discussed the meeting with Sergeant VanderMeer, but not with the Board. On January 27 she discussed with her neighbour, John Crossingham, her intention to charge Gayder; on January 29 she checked references regarding lawyer William Dunlop with a view to retaining him concerning the proposed charges. On January 30, she met with

Shoveller and Crossingham, in the presence of VanderMeer, and advised Shoveller of her intention to charge Gayder. On January 31, she met with Dunlop to discuss the charges, and on February 1 met with Jim Bradley, the local MPP to inform him of her intention to charge Gayder. For the next few days she prepared for the laying of the charges and consulted Crown Attorney Andrew Bell and Dunlop concerning their wording. None of these intentions or preparations were disclosed to the Board as a whole, although VanderMeer had told Hanrahan privately.

Thus, when Mrs Taylor laid the charges against Gayder on February 5, the Board was faced with a fait accompli and were advised that they had no alternative to suspending Gayder in the face of the charges that had already been laid. While any member of a Board can lay a charge against a Chief, I am firmly of the view that such a course of action is, because of its impact on the confidence of the public in its Force, probably the most serious and important matter that could come before a Board. It was unnecessary and improper to force such a momentous decision upon a Board without adequate notice to and consultation with all Board members, and in the absence of the former chairman who was on vacation.

Judge Killeen, a respected former chairman of the London, Ontario, Board of Police Commissioners, frequently prepared papers for delivery at annual seminars of the municipal Police Authorities. In his 1985 paper on the role of members of Police Boards, he quoted S.31(1) of *Police Act Regulation 791*: "No chief of police, constable or other police officer shall take or act upon any order, direction or instruction of a member of a board or council." He continued: "The whole thrust of Part II of the *Act*, as reinforced by S.31(1) of Regulation 791, is that a board can only act legally when it acts **collectively**. Individual members, including the chairman, cannot embark on 'power trips' or frolics of their own." In his 1987 paper for the MPA, Judge Killeen said: "My final profile is of the commissioner who envisages himself not as a policy-maker *cum* governor of the force but rather as a 'super-chief' of sorts who wants to engage in an activist operations role within the force .... This kind of a commissioner does not understand his role ... he is acting against the best interests of the force and usually becomes a divisive presence on the board and within the local police structure generally."

Mrs. Taylor's actions were in direct contravention of the proper role of a member of a police services board as so accurately and graphically prescribed by Judge Killeen. She was seen by many to be adopting the role of a police commissioner in the USA, who is often a sort of "super chief." In

Canada, members of a police board are bound to act collectively, and that is the only way its actions can be legal.

In Police Headquarters in St. Catharines, the offices of the Chief and Deputy Chief are located in the same areas as the Board offices. During the events leading up to Gayder's suspension, and during the IIT investigation, Mrs. Taylor's frequent visits to Shoveller's office apparently caused concern as to who was in charge. I am well aware of the tightness of police budgets, but, in order that the separation of the roles of the Board and of police management be clearly seen, the offices of the Police Services Board should be located in premises separate from Police Headquarters.

Good intentions, conscientiousness and hard work do not necessarily lead to the effectiveness of a police services board. The board has a complex role. It operates in a political context but has both administrative and quasi-judicial responsibilities. This represents a considerable challenge for lay persons, even if they have general experience and good educational backgrounds. It is essential for the efficient and orderly operation and administration of a police force that there be a clear understanding of the respective roles of the Chief and the Board, and that each understands what the other perceives as its role in a particular situation. It is not enough to merely state that the board is responsible for policy and the Chief of Police is responsible for operations. Many important management issues fall in a grey area between policy and operations. Such issues need to be dealt with by a board working with its Chief, each having a clear understanding of what actions require joint action and co-operation, and what fall within the exclusive jurisdiction of the other.

This calls for adequate education and guidelines for new Board appointees. It appears that, until quite recently, these have been lacking. The Municipal Police Governing Authorities, made up of police commissions, was formed in 1963, and by the 1970s was providing two conferences each year; a labour relations workshop; a newsletter; and, in co-operation with the OPC, seminars for new Board members. However, participation in these services was not compulsory. Following the passing of the *Police Services Act*, the name of the Association was changed to "Ontario Association of Police Services Boards," referred to as OAPSB. In 1989, the Association made a proposal to the Solicitor General, which was accepted, to jointly establish a police board training program. The program, managed and directed by OAPSB, includes two annual conferences where members can discuss current issues and problems; various educational workshops at different centres throughout the province; labour relations statistical services; and some publications, such as *PSB News* and a handbook for Board members which is presently being revised to accord with the new *Act*. Stuart Ellis, who was retained as Board counsel in the spring of 1992, had some excellent suggestions for matters that should be covered in a handbook. While most of them are probably contained in the projected handbook, his suggestions might be of some assistance.

These matters are:

(a) The general jurisdiction of Police Services Boards;

(b) Specific matters that a Police Services Board cannot embark upon;

(c) The implications inherent in actions by members of Police Services Boards particularly as such actions may relate to criminal or civil liability or breach of regulation under or the provisions of the *Police Services Act* itself;

(d) A summary of ancillary legislation such as provisions in the *Municipal Act* or other legislation that may impinge or affect or enhance the jurisdiction of the Police Services Boards;

(e) Some specific cases in point about the administration of Police service generally such as:

  (i) How to deal with media;

  (ii) How to deal with concerns about the Police Chief;

  (iii) Who to provide information to or relate concerns to;

  (iv) Who to seek advice from;

  (v) Specifically what an individual member of a Police Services Board can or cannot do;

  (vi) Specific identity of the types of matters that may be regulated by a bylaw of the Board;

  (vii) Specific matters relating to the conduct of hearings;

(viii) Specimen or draft bylaws in order to present some continuity of legislation or administration among Police Boards in the province.

Unfortunately, none of the training programs is compulsory, and attendance approaches only about 40 per cent of eligible members. Some Boards insist that all their members attend; some have none attending. Most present Board members were appointed within the last two years, with the result that very few have had extensive experience. The position they hold is too complicated and powerful to be held by amateurs or local politicians not familiar with the complexities of modern policing. It is essential that every newly appointed member attend the training program for new members, and at least that program should be made compulsory. It has also been suggested that new members, on completion of the training program, be required to pass a basic written test before being sworn in. The proposal has merit, and should be considered by the Ministry of the Solicitor General.

Victor MacDonald, in his consultant's report to the Commission, suggests the following briefings and information for new Board members:

- a clear outline of the type of information they need and should expect from the Force, and why;

- a talk by someone who can discuss the Board's function from a political perspective;

- an outline of professional management and operational police standards;

- clear understanding of the responsibilities of the Board, how those may overlap with the responsibilities of senior police managers and how to resolve conflicts in jurisdiction;

- a quick review of labour relations including:

    - ongoing relationships with the Police Association
    - collective bargaining
    - grievances, disputes, arbitration, etc.

- a quick review of and clear procedures for the handling of the quasi-judicial functions [e.g. appeals of *Police Services Act* charges];

- a clear idea of where to go for information or advice and what to do and where to go in the case of irresolvable conflict within the Board or when concerns regarding the integrity of the Chief of Police arise.

I agree with Mr. MacDonald's suggestions, and undoubtedly the Ministry of the Solicitor General and the Ontario Civilian Commission on Police Services (OCCPS) would have additional proposals for the improvement of the education of Board members. An educational program should be devised, and be made compulsory for all new Board members before they are sworn in. The *Police Services Act* merely states: "The board shall ensure that its members undergo any training that the Solicitor General may provide or require." There is no regulation providing any sanction if the Board fails in this duty, or requiring that training materials or facilities be provided.

Had the type of information and training suggested above been compulsory, and had the warning signals of trouble in the NRPF, and the approaches to the OPC and the Solicitor General been followed up by more advice and assistance from the Ministry, it is possible that the crisis in Niagara, and even the calling of this Inquiry, might have been avoided.

In addition to improved training procedures, in order to avoid what occurred in Niagara in 1986 when three out of five Board members were new appointees without prior experience, and again in 1992 when the Board membership was increased to seven of whom six were new and without prior experience, terms of office should be staggered so that the Board is never left without a majority of experienced members.

Counsel for Chief Shoveller points out in his submissions that Shoveller had only an acting role as Chief for more than six months following Gayder's resignation, and that this situation may create the appearance that the Board is running the Force pending the appointment of a new Chief.

I agree that this undermines the appearance of independence of the office of Chief of Police. When a vacancy in the Office of Chief occurs suddenly, a new Chief should be appointed as soon as possible. There should be a provision requiring that the Policing Services Division of the Solicitor General's Ministry be notified in such a case, and that it should assist the Board in expediting the appointment. Chief Shoveller is to be commended for giving the Board a full six months notice of his intention to retire on February 28, 1993, thus allowing the Board sufficient time to ensure that his successor would be appointed and ready to take over the Chief's duties without any interregnum.

Another problem may arise under section 62 of the new *Police Services Act*. While a board is no longer empowered to suspend a Chief of Police, section 62 allows it to hold a hearing to determine whether the Chief of Police is guilty of misconduct, and the Chief is given the right to refer the matter to the OCCPS. It is unclear what the section hopes to accomplish, or what disciplinary powers the board may have if it finds the Chief is guilty of misconduct. As a matter of practice, and from the point of view of the media and the public, this procedure is likely to be seen as having the same effect as a charge under the former *Police Act*.

There are many factors that can cause friction between Chiefs and boards, and because of lack of experience in policing problems on the part of many Board members, and the possibility that politics can be seen to be involved, a board should not have the power to investigate or discipline its Chief. I would recommend that the Ministry of the Solicitor General consider amending the section to delete any provision for the disciplining or suspending of a Chief by his board, and instead, provide that, where the board perceives a serious problem concerning its Chief, it should advise the OCCPS, and that body should then take over the whole matter.

The *Police Services Act* imposes certain obligations on a Police Services Board, and its members, but the only provision for sanction for failure to comply is that contained in section 23, which requires a hearing, with a right of appeal to Divisional Court. This procedure could cause months of delay and considerable expense to all concerned. There may be occasions of improper or unwise conduct on the part of Board members that do not warrant a full-blown hearing, and where a simple "wrist slapping" by the Commissioner or a member of the OCCPS would be effective. It may be that it was assumed that the OCCPS has this as an inherent right, without it being specified in the legislation. This is exactly what John McBeth of the OPC attempted to do in September 1986.[1] I consider this was a proper function of the OPC; however, it resulted in howls of protest that were repeated before this Inquiry. I recommend that the Ministry of the Solicitor General consider spelling out in the legislation the right of the OCCPS to "counsel" boards, in order to avoid similar reactions. Consideration might also be given to providing a right to summarily remove, or at least suspend, a member found to be in serious breach of the member's obligations.

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[1] See p. 207 ff.

In their submissions, several counsel warned of the dangers of politicization of Police Service Boards. It was observed that, following a change in government, when the terms of office of sitting Board members expired, it often happened that an almost entirely new Board was appointed. Mr. Ellis, new counsel for the Board, submitted: "If it is a general feeling that the administration of police forces should not be at the whim of those who may be subject to the constraints of the political arena, then perhaps a re-examination of the constituency from which appointments are made to Police Services Boards should be entertained." Perhaps the pithiest comment was found in the submissions of Constable Rattray: "I invite you, Mr. Commissioner, to recommend that we keep the politicians out of police work and the police out of politics."

I concur with the above comments.

(B) THE BOARD AND THE INQUIRY

The fundamental misunderstanding on the part of the Board or some of its members as to the proper nature of its role caused many of the problems that led to the 1987 crisis and the calling of the Inquiry. Unfortunately, that misunderstanding continued throughout the Inquiry and created further problems for the Force and harm to its public image.

At the first organizational hearing on June 27, 1988, counsel for the Board made it clear that their clients were unhappy with some of the terms of reference, and particularly the failure of the Solicitor General to include therein, as requested by the Board, the requirement that the Commission look behind the opinion of senior members of the Attorney General's Department that there were no reasonable and probable grounds for criminal charges against ex-Chief Gayder, as recommended by the IIT. I refused an application by the Board counsel to request such an expansion of the terms of reference on the grounds that my mandate, already awesome in breadth, was to inquire into the NRPF, not the departments of the Solicitor General and Attorney General. Nevertheless, Board counsel and Board members repeatedly complained that this ruling had curtailed their right to fully explore the motives of the government officials involved in the departmental opinion, although I have never understood the relevancy thereof in relation to the Inquiry's goal of restoring public confidence in the NRPF.

As I have already mentioned, it was expected that the IIT briefs would persuade the Attorney General to recommend criminal charges against Gayder, thus justifying his earlier removal. When this did not happen, it was thought that a public inquiry, with terms of reference dictated by the Board, would accomplish the same end.

My impression was that the Board originally perceived the Inquiry, since they were the ones who asked for it, as being their own to control as they wished. When, in the very early stages of the Inquiry, preliminary interviews of the Board members by Commission investigators indicated to them that the terms of reference included their own administration, followed by the realization of their inability to dictate the way in which the Inquiry would be conducted, it appears that their alarm resulted in a resolution passed at a "Special Confidential Meeting" of the Board on August 18, 1988. The resolution recited that "the Board having been informed by its counsel Peter A. Shoniker that the Colter Inquiry counsel and investigators have requested that counsel for this Board, Chief J.E. Shoveller and the Niagara Regional Police Force, make available to them copies of all documents, statements and interviews as well as impart to them all knowledge of all items relevant to the Inquiry's terms of reference; having canvassed the views of Chief J.E. Shoveller, this Board directs – Edward J. Ratushny, Q.C., Frederick S. Fedorsen, Peter A. Shoniker and Peter M. Barr and their agents and representatives to disclose no information, documents, statements and/or interviews to the Colter Inquiry counsel or investigators until such time as this Board is satisfied through its counsel, that the Colter Inquiry will; a) be full and complete; b) seek and obtain the truth and, c) establish once and for all the credibility of the Niagara Regional Police Force." This was followed by a letter from Board counsel to Commission counsel that the Board counsel had been instructed to take a "pro-active stand" in their dealings with the Commission. Notes from the August 18, 1988 meeting state, "Proactive is essentially a method by which we must be resourceful in assembling a body of information and evidence **to the exclusion of the Inquiry investigators and counsel."** (emphasis mine)

The "proactive" stand proved to be an obstructive stand. The resolution itself did not come to light until February, 1990, when Gayder's counsel applied for an order for production of all Board Minutes and tape recordings of all Board meetings, an application that was vigorously opposed by the Board. The discovery of the resolution helped to explain the technical impediments sometimes encountered by the Commission investigators and Commission counsel in their efforts to look into the Board's administrative practices. For instance, on September 1, 1988, Shoveller's counsel wrote to the Commission stating that the Chief would resist being interviewed by Commission investigators, but would answer, in writing, questions put to him in writing.

Instead of co-operating with the Commission in order to find out why the Force seemed to have lost the confidence of the public, as posited by the terms of reference, and to find ways of restoring that confidence, the Board, through its counsel, appeared to consider it was on trial and seized upon every possible way to deflect attention from itself by endlessly pursuing any event or non-event which might lead to proof of misconduct on the part of Gayder.

An example of the obstructions which the Board placed before this Inquiry can be found in their conduct in relation to the very order which caused this "non co-operation" resolution to come to light. The February, 1990 order was for production of all Board minutes and tapes from the date of the Order in Council forward, including minutes of *in camera* meetings, which would be examined by Commission counsel and Board counsel, and, in the event of disagreement, by me, as to relevancy or privilege before being made available to the Inquiry. The Board appealed this order to the Divisional Court. The appeal was eventually withdrawn subject to certain conditions, which were not resolved nor the tapes released until more than a year later, when a further motion for their production was launched by the original applicant. Even on this renewed application, further lengthy arguments were advanced concerning the tapes being subject to solicitor and client privilege, and therefore not subject to production, and that, in any event, the Commission was not entitled to look into anything which had occurred after March 25, 1988, the date of the Order in Council. Upon a further order being granted for immediate production of the tapes following examination by me as to relevancy and privilege, Board counsel then requested a stay of the order to allow another appeal. This was refused in view of the year's delay in production following the first order. Meanwhile, one of the tapes most urgently sought was lost.

Considering that all that the Commission was asking was the opportunity to examine tape recordings of meetings of public representatives performing their public duties, the Board's actions appeared more obstructive than constructive. A possible explanation for the Board's reluctance to assist the Commission, and its resistance of the order to produce its minutes, in spite of the specific requirement in the Order in Council that all Boards "shall assist the Commissioner to the fullest extent," and Board counsel's frequent public protestation that the Board's only interest was "to seek the truth," is best summed up by a perceptive observation of the Divisional Court in its March 31, 1992, judgement. This judgement dismissed a joint motion by the Board and Mrs. Taylor and Sergeant VanderMeer personally to prohibit the Inquiry from making any findings of misconduct on their part. After finding "no substance whatever to any or all of the objections" to the Commission procedures which had been advanced by the applicants, the court went on to state: "What appears to have happened is that during the course of the Inquiry the accusers have become the accused. As such, their interest in reaching the day of judgement has abated." The application and the legal arguments preceding it forced the cancellation of my earlier ruling fixing May 15, 1991, as the date for the filing of final submissions, and the result was that final submissions were not filed until July 15, 1992, a delay of more than a year.

The Board created another problem for the Inquiry by its practice of commenting in the media on matters concerning the Inquiry. The Board appeared to be seeking to achieve its purposes by influencing public opinion instead of presenting its position before the Inquiry, as it should have done. This was disrespectful to the Inquiry, and made it difficult to proceed properly when one party was presenting part of its case in a different forum – the press. The situation was made more difficult because the press interviews and releases were frequently based on inaccurate information.

For example, on February 1, 1990, following evidence seen to be critical of Mrs. Taylor (Board chairman), Mr. Mal Woodhouse (the Board vice-chairman) held a press conference characterizing the evidence as a "frolic" of the Commission in using the Inquiry to attack the Board chairman, rather than the "fundamental reasons for calling this Inquiry ... These are allegations of impropriety, and in particular, concerns that organized crime may have been involved ...." The release stated: "Our instruction to counsel has always been to seek the truth, to ensure that the truth be known notwithstanding that Board members might have to be vigorously questioned in order to get at the truth." The release went on to criticize the Commission for examining the IIT's activities without obtaining an expansion of the terms of reference to specifically include that subject.

Later that month, on February 22, 1990, following my ruling that the Board must deliver the audio tapes of Board meetings for examination by Commission counsel and, in case of dispute, by me, the Board, in spite of its repeated assertions that it wanted the truth to come out even if Board members had to be "vigorously questioned," issued a four-page press release. In the press release, the Board announced that it was appealing the ruling, and expressed outrage at its private meetings being looked into, at my ruling that they had waived solicitor and client privilege in relation to certain matters, and at the Inquiry's intention to examine any developments that arose after the date of the Order in Council.

No notice of appeal had been served on the Commission at the time, and when the press release was brought to my attention and I commented on February 27 on the irregularity of giving notice by way of the media, Board counsel stated he had not seen the press release prior to its publication. In contrast to this, Mr. Woodhouse, who signed the press release as vice-chairman of the Board, testified on May 4, 1992, that it had been drafted by Mr. Shoniker as Board counsel.

A similar situation arose a few months later. On September 7, 1990, the Board sent a long letter, over the signature of Mr. Woodhouse, to Premier Peterson with a copy to then Premier-elect Rae. A copy of the letter was released to the press on September 12, 1990, the day following the publicity engendered by Mr. Rowell's attack on Commission counsel. Because of the volatile nature of its contents and the high profile of the addressees, the letter resulted in renewed headlines. It expressed the Board's displeasure over a number of things, including the investigation of the Board's actions, the cost of the Inquiry for which the Board was paying four counsel and continued with four and a half pages of charges of OPP and OPC incompetency in their earlier investigations of the Force, and of "curious actions of senior staff from the Ministry of the Attorney General in (a) framing the terms of reference, (b) rendering a legal opinion on the merits of laying criminal charges against former Chief Gayder which is ... flawed and misleading." It also complained that the Commission was spending too much time investigating the actions of the IIT and that its counsel had objected that this was "not mandated by the Order in Council."

There could be only one possible reason for writing the letter, and that was to bring pressure to bear on the Commission. It was inexcusable for the Board to attempt to influence the Commission by writing to the Premier of the province, and by releasing the letter to the press.

To make matters even worse, the letter was replete with factual errors. On the record, Commission counsel refuted a number of the incorrect statements. Mr. Shoniker, counsel for the Board, stated he had not seen the letter until Commission counsel gave him a copy, and that "I knew nothing about the matter being revealed to the press." Two weeks later, he advised the Inquiry that he had been directed by Mr. Woodhouse to apologize for inaccuracies in the letter, which arose from "errors and misunderstandings." As to its release to the press, he explained that at the time, a reporter had asked him for a copy of it, and he had directed her to Mr. Woodhouse. Woodhouse later testified that the letter had been drafted by Mr. Shoniker, and produced a draft of the letter which had been faxed from Mr. Shoniker's firm. It is, therefore, difficult to understand the statement in the letter that Board counsel had objected to the investigation of the IIT as "not mandated by the Order in Council." On November 30, 1988, early in the hearings, Mr. Shoniker specifically agreed that the investigation of the IIT was included in the terms of reference.[2] On later occasions, Mr. Shoniker submitted that the IIT investigation also fell within terms 2 and 3 of the Order in Council.

It is understandable why no one wanted to accept responsibility for press releases and letters which were later shown to be inaccurate, but the general attitude was not one of forthrightness or co-operation, and was a great hindrance to the progress of the Inquiry.

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[2] Inquiry transcript, vol. 9 (Nov. 30, 1988):54-55.

On November 15, 1990, Commission counsel completed the calling of evidence subject to evidence other counsel might wish to call. However, when the Inquiry reconvened on November 20, 1990, on what was assumed to be the final evidentiary session of the Inquiry pending final submissions, no further evidence was requested and pursuant to the earlier agreement of all counsel, several interview transcripts were filed without the necessity of calling the interviewees. The Inquiry then adjourned pending notification to counsel of the date for delivery of counsel's submissions. In due course, following suggestions from various of the parties, counsel were notified that May 15, 1991, was the date for final submissions.

Much legalistic wrangling followed, resulting in a series of motions to me, as Commissioner, by the Board and by Sergeant VanderMeer for a ruling that, amongst other things, the Commission could not make findings of misconduct against Sergeant VanderMeer or any Board member. Upon the motion being dismissed, the Board retained outside counsel to appeal the decision to the Divisional Court on behalf of the Board and of Mrs. Taylor and Sergeant VanderMeer personally. This was quite surprising, since the Board had, some months earlier, appealed to me, as Commissioner, for funds to enable it to continue legal representation before the Inquiry, on the grounds that it had run out of funds. In response to that appeal, in April 1991, the Commission had paid to the Board, out of its already strained budget, one-quarter of a million dollars in order to allow the Board to continue to be represented at the Inquiry hearings. The Board's action in joining VanderMeer in motions to prevent findings of misconduct resulted in other parties suggesting that frustration of the Inquiry had been orchestrated by counsel for VanderMeer and counsel for the Board. Gayder's counsel subpoenaed two Board members to give evidence about such arrangements, and they appeared in answer to the subpoena. However, Board counsel instructed them not to give evidence, and rather than put them at risk of a charge of contempt of court, Gayder's counsel withdrew the subpoenas. The resulting publicity did not assist in the Inquiry's efforts to restore the confidence of the public in the administration of the Force.

The application to the Divisional Court was unanimously dismissed by all three members of the Court on March 31, 1992. The litigation thus held up the Inquiry for more than a year, with counsel's final submissions eventually being delivered to June 5, 1992, instead of May 15, 1991 as originally planned. Counsels' rebuttal to these submissions as they affected their own clients were filed on July 15, 1992, and the Inquiry then adjourned for preparation of this report.

The Board's judgement in bringing these motions is questionable on another level as well. Under the Collective Agreement between the Board and the Police Association, it is provided that where an officer's conduct is called into question in a public inquiry, and no finding of misconduct is made against him, he shall be indemnified for his legal costs. In a press interview following the dismissal of the Board's appeal, the Board manager estimated these costs at one and one-half times the legal aid rate which the Commission was already paying out of its own budget to counsel for police officers who had been granted funding. The point of her remarks was that, had the court application been successful, no findings of misconduct in relation to the Board's co-applicant, Sergeant VanderMeer, or any other funded officers, could have been made, and the Board could then be faced with a claim by VanderMeer's counsel, and possibly others, for their regular fees over and above the legal aid rate paid to them by the Commission. In addition, had the Board been successful in its appeal, it would have emasculated the Inquiry so that it could make no effective findings, and probably would have ended the Inquiry as happened in the Patti Starr Inquiry. As a result, the very reason for calling the Inquiry, namely, to restore public confidence in the Force, would have been frustrated, and the rumours and allegations hanging over the NRPF would have remained.

The Board must have been aware of all this, thus raising the question whether it was more interested in protecting its individual Board members than it was in protecting the interest of the public.

It must be noted that, on February 28, 1991, the Board passed bylaw N°. 124-91 providing for an indemnification of Board members for any legal expense incurred as a result of any action or other proceeding, other than one under the *Municipal Conflict of Interest Act*, arising out of acts or omissions done or made in good faith in his or her capacity as Board members. This has some significance in view of the judgement of the Divisional Court allowing the Commission to recover its costs against Mrs. Taylor and Sergeant VanderMeer personally, as well as against the Board itself. The Commission has not taken any steps in this regard.

Throughout the Inquiry the Board made much in its various press releases, public statements and televised submissions before the Inquiry, that their only intention was to "seek the truth" – no matter whom it hurt. Some examples of such statements have been set out above. These statements were designed for public consumption. Not only were they not implemented, but quite the opposite occurred. What in fact happened was that from the beginning the Board decided that it would not co-operate with the Inquiry and that it would keep information from the Inquiry. As the hearings progressed the Board became increasingly active in seeking to deflect the truth, whenever it appeared that the truth would reflect negatively on the Board or one of its members. This was not conduct appropriate for public representatives.

I have set out just some of the many examples of how throughout the Inquiry the Board failed to recognize and fulfil its proper role. The Board's prime concern should have been to assist the Inquiry in its examination of every relevant aspect of the Force, so that any problems could be ascertained and possible solutions could be explored. The good of the public they represent and the Force they guide required such an examination. Indeed, the Order in Council creating the Inquiry specifically required the Board to co-operate in that fashion. Unfortunately, the Board's main interest appeared to be in justifying the actions of its individual members, so that until the change in membership in 1992 the Board's actions were an obstacle rather than a help. Worse, by advancing so many of its positions in the press, the Board continued to undermine public confidence in the Force, thus furthering the very damage they should have been assisting the Inquiry to correct.

I have commented at some length on these aspects, as I consider this attitude on the part of the Board to have been one of the more significant problems in this Force and an example of the real dangers inherent in politicized Boards which fail to act collectively in the best interest of the Force. I accordingly consider the implementation of my recommendations at the end of this chapter to be important for the good of all police forces in this province.

RECOMMENDATIONS

It is recommended that:

1. *A training course, with improved educational materials and facilities be developed for new appointees to police services boards.*

2. *A new appointee to a police services board be required to complete the training course before being sworn in as a member of the board.*

3. *A system be established whereby the attendance of board members at workshops is monitored and taken into account when their re-appointment is being considered.*

4. *Consideration be given to the appointment, to boards that do not have solicitors, of a legally trained person, not to give policy advice, but to recognize problems that may require legal advice.*

5. *Consideration be given to providing suitable police services board offices in premises other than police buildings.*

6. *The Ministry of the Solicitor General consider eliminating any provision that would empower a board to suspend, discharge or discipline its Chief, and provide that the board refer to the OCCPS any situation that may require such action.*

7. *There be a provision that no individual member of a Board may take any action affecting the Chief, and that only the Board may take such action.*

8. *Terms of Office of appointees to police services boards be "staggered" so that the board always has a majority of experienced members.*

9. *Police Chiefs should, whenever possible, give adequate notice of an intention to take early retirement. The Policing Services Division of the Ministry of the Solicitor General should be immediately notified, and should assist the Board in ensuring that a new Chief is ready to take office upon the retirement of the retiring Chief.*

10. *The* Police Services Act *be amended, or a regulation be passed, to make it clear that the OCCPS has jurisdiction to counsel Police Services Boards, and to summarily remove or suspend members found to be in serious breach of duty, subject to a right of appeal to the Solicitor General.*

11. *That the method of appointment of members of Police Services Boards be examined to ensure that the appointments be, and be seen to be, unconnected to any political affiliation.*

8 REPORT ON THE NEXT CHIEF[1]

Police forces, because of their paramilitary traditions and rank structure, tend to be influenced by the philosophy and attitudes of their senior officers to a greater degree than other organizations. In that regard, the most significant influence is likely to be that of the Chief of Police, and the selection of a Chief is a matter that can have a profound effect on a force. It had been my intention to make recommendations concerning that selection process in my report on all of the matters referred to me by the Order in Council creating this Inquiry, but such an all-encompassing report will not be completed for some time. However, the tendering by Chief Shoveller of his resignation effective next February, and the fact that the search for a new Chief is about to commence, persuades me that I should at this time issue my report concerning the selection of the next Chief of Police. The announcement that Deputy Chief Kelly will also be retiring at about the same time is a further reason for doing so.

In order to explain as briefly as possible the special importance to the Niagara Regional Police Force of the selection of the next Chief, it is necessary to review some of the history of the Force.

On January 1, 1971, under the provisions of *The Regional Municipality of Niagara Act, 1968-69*, the 11 existing municipal police forces in the region were amalgamated to form the Niagara Regional Police Force. These municipal forces, varying in size from 5 to 134 members, each had their own parochial loyalties and modes of operation. One of the provisions of the legislation was that the members of a local force could not be required to move more than five miles from their former municipality. This restriction contributed to a continuation of members identifying with their original force, rather than with the new Force as a whole.

In preparing for amalgamation, a committee was appointed to plan for the new force. The three members were senior officers drawn from the three largest pre-amalgamation forces: Inspector James Gayder from St. Catharines and Deputy Chiefs Donald Harris and Martin Walsh from Niagara Falls and Welland, respectively. Upon amalgamation, Albert Shennan, former Chief of the St. Catharines Force, became Chief of the Regional Force, with Harris and Gayder as Deputy Chiefs. When Shennan retired, Harris, formerly of Niagara Falls, became Chief, and upon Harris' retirement, Gayder, formerly of St. Catharines, succeeded him. It is unclear whether applications were solicited or other candidates interviewed, but it seems to have been understood, or at least the impression was given, that the position would be alternated between candidates from St. Catharines and Niagara Falls. Gayder, on being appointed Chief, appeared to continue the "tradition" by selecting a deputy from each of St. Catharines and Niagara Falls. Evidence at the Inquiry was to the effect that many Force members had a perception that this was an "old boy system" which affected the functioning of the Force including its promotion policy, and that this perception resulted in "infighting" between the factions.

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[1] This report was issued on August 24, 1992 following the announcement of Chief Shoveller's pending retirement.

That there were factional problems was also recognized outside the Force. CBC investigating journalist, Gerry McAuliffe, who had taken a considerable interest in the administration of the Force and had broadcast a series of critical reports about it, testified that it appeared to him that the "camps" promoted their own people and that he knew of "inappropriate conduct" in the infighting between the camps, although he refused to give details since that might reveal his sources. An investigator for the Ontario Police Commission, whose investigation of certain complaints against the Force will be described elsewhere in my report, testified that he received complaints from Force members that the Force was not unified and that there were "squabblings" and rivalries that "weren't healthy." He characterized this as "a most important concern." Mrs. Denise Taylor, when first appointed to the Board of Commissioners of Police, met with a local criminal lawyer to learn about Force problems, and he not only told her about the two "camps", but gave her the names of officers involved. At the Inquiry, in explaining one of Mrs. Taylor's notes of their conversation, he testified that it was a reference to the factions, and that "If you were the Niagara Falls faction, you wouldn't trust the St. Catharines faction." The President of the local John Howard Society also spoke of "factions" in the Niagara Falls versus St. Catharines situation and their divisiveness. The Administrator of the Niagara Region Police Association testified that the reason the Association had recommended that the 1987 Internal Investigation should be given to an outside force was that it was perceived that the Niagara Falls faction was out to investigate the St. Catharines faction. In his view, the events of 1987 involving Gayder's resignation and the appointment of John Shoveller of Niagara Falls as Chief were a "coup" with the Niagara Falls faction seizing power from the St. Catharines faction.

One would think that over 20 years of attrition since the 1971 amalgamation would have completely eroded the "two-camp" perception, but the evidence indicates otherwise. Although Chief Shoveller testified that he did not believe that the idea of factionalism had any validity, he agreed that pre-amalgamation loyalties were carried over into the new Force. He estimated that 30-35% of the present officer complement were members of the pre-amalgamation municipal forces, and that the perception of two or more factions has survived to the present time, perhaps because of the indoctrination of new members by older members. As already mentioned, the events of 1987, such as the laying of charges against Chief Gayder (seen as the head of one of the camps) and his subsequent resignation, followed by an intensive internal investigation of allegations against him, seemed to confirm these suspicions in the minds of some, and the evidence at this Inquiry has done nothing to allay them.

Submissions were made to me advocating the appointment of an "outside" Chief to succeed Chief Shoveller, as a means of promoting unity and laying to rest the "two-camp" perception. The same reasoning applies, although to a lesser extent, to the selection of a Deputy Chief. I recognize the drawbacks in implementing such a suggestion, particularly the potentially negative effect on the morale of those within the Force who might aspire to become Chief or Deputy Chief, or move up as a result of a senior officer's promotion.

Ordinarily, I would subscribe to the view that the selection should be of the best person for the job regardless of origin, but the situation in Niagara is exceptional. Also, the simultaneous opening of the position of Deputy Chief provides an opportunity for a new Chief from outside the Force to take part in the selection of his new deputy.

I trust that, if it is made clear that my recommendations are a one-time departure from the norm, the Force members will understand.

RECOMMENDATIONS

It is recommended that:

1. *On a one-time basis, the new Chief be selected from qualified police officers from outside the Niagara Regional Police Force.*

2. *If a new Deputy Chief is to be appointed, that appointment be delayed to allow the new Chief to have input into the selection process.*

3. *On a one-time basis, consideration be given to selecting such Deputy Chief from qualified police officers from outside the Niagara Regional Police Force.*

August 24, 1992.

PART IV

THE FORCE AND ITS IMAGE

1 Public Confidence
2 Media Relations
3 Morale
4 Public Complaints
5 Labour Relations
6 Recycled Rumours

1 PUBLIC CONFIDENCE

The preamble of the Inquiry's terms of reference in part states "... the expression of such concerns may have resulted in a loss of public confidence in the ability of the Force to discharge its law enforcement responsibilities, and ... the Government of Ontario is of the view that there is need for the public ... to have confidence in the operation and administration of the Force ...."

Accordingly, the Commission considered it was necessary to ascertain, in an objective and scientific way, not only a measure of the general public's confidence in the police in the Niagara Region but some indication of its priorities with respect to police service. To this end Environics Research Group Limited of Toronto, which has been regularly monitoring public attitudes towards public institutions in Canada for some years, was retained in July, 1989 to survey the opinions of Niagara residents. Working with Inquiry staff, a questionnaire was developed and administered by telephone between July 17 and 31, 1989 to more than 800 randomly-selected adult residents of the Niagara Region. For comparative purposes, some questions were also asked of a randomly-selected sample of over 1,000 Ontario residents and data from past Environics surveys were considered, where relevant.

At the outset of the interview, to place the policing issue in context, residents were asked what, in their opinion, was the single most important local problem facing the Niagara Region. "Police corruption and scandals" was identified by only one per cent of the respondents. Thirty-eight per cent identified the environment as the most important problem and eight per cent mentioned unemployment. Comparing responses in St. Catharines, Niagara Falls, Welland and the remaining rural areas, taken as a whole, there was no difference in the perceived importance of the police corruption issue.

The overall ranking of problems by Niagara residents was not unlike that generally found in Environics' province-wide FOCUS ONTARIO surveys. As of the time of the Niagara survey, the environment was the number one issue in the public mind and scandals were the major issue for only four per cent of Ontario residents, even though the Patti Starr affair was then current and receiving much publicity.

In the Niagara Region, as in the province as a whole, nurses (70%) were more likely to instill "a great deal of confidence" than were doctors (53%) and the local police (50%), although doctors and police inspired more confidence than teachers (38%) and lawyers (27%). Confidence in local police was somewhat lower in the Niagara Region (50%) than in Ontario (64%) as a whole, and, conversely, Niagara residents showed more confidence in lawyers (27%) than did residents in Ontario (21%) generally.

In Niagara, confidence in the police increased with the age of the respondent. Confidence was lowest in the youngest respondents. Across areas in the region, confidence was somewhat lower in Welland than elsewhere. In Welland, only 45 per cent said they had a great deal of confidence in the police.

Residents were also asked to indicate their confidence in the three groups involved in policing the Niagara Region: police officers on the street, police management, and the Board of Commissioners of Police. Confidence in police officers on the street (54%) was substantially greater than in police management (17%) or the Board of Commissioners (14%). The patterns of confidence in police management and the Board of Commissioners were not greatly different, although, perhaps through lack of familiarity, a larger number of people were unable to express an opinion about the Board.

Respondents were asked whether their opinion of a number of local institutions, including local police, had gone up, gone down, or stayed the same over the past year. In the case of local police, as many people said their opinion had gone up (17%) as said it had gone down (17%). The greatest number (62%) said their opinion remained the same. This represents a considerably less favourable view than with the fire department, where 29 per cent said their opinion went up and almost no one said it went down. The police fared better than local government, however: only nine per cent said their opinion of local government improved over the past year and 41 per cent said it had gone down.

Respondents were asked to indicate which one of a number of sources was most important to them in forming their opinions about the NRPF. Forty per cent said their own personal experience was most important. Newspaper reports were most important for 28 per cent; another 18 per cent relied on radio and TV reports. Ten per cent said that what they heard from friends and acquaintances was most important to them. The primary source of information on which residents based their opinions did not affect the level of confidence shown in the police.

Seventy-six per cent of Niagara Region residents were aware of the Commission of Inquiry into the NRPF. Awareness was higher among older residents than among younger residents (perhaps because the older ones were more likely to be at home watching the Inquiry on cable television). It was slightly higher in St. Catharines and the rural areas of the region than it was in Welland and Niagara Falls.

Those who were aware of the Inquiry were asked what, if any, was the most inappropriate activity on the part of the NRPF. Seven per cent volunteered that they thought no wrong had been done and 46 per cent were unable to identify any specific activity. The others mentioned a variety of activities. Fourteen per cent cited the mishandling of seized property and gun incidents, eight per cent secrecy and cover-up, and seven per cent general mismanagement. Another seven per cent referred to poor performance on the part of officers on the street. Five per cent indicated poor hiring practices. Seven per cent indicated a number of other activities. When asked what they would do if they had a complaint against the police, 50.2 per cent of those who answered the question said they would go directly to the police, and a large majority of these were confident that this would lead to a fair resolution of the matter.

Respondents were asked to indicate whether they thought the Niagara Regional Police were doing a good job, an average job, or a poor job in five key areas. A majority thought the police were doing a good job in being approachable and easy to talk to (60%), and in enforcing the laws (53%). Forty-six per cent viewed the police as doing a good job of responding to calls promptly. Forty-two per cent said the NRPF did a good job of supplying crime prevention information and 31 per cent said they did a good job of providing services to a range of ethnic and racial groups across the community.

While no similar data were available for communities of the same size as Niagara, the same question was asked of Metro Toronto residents in December 1988 with regard to their police force. The results of that METROPOLL survey show a similar pattern and range, although Metro Police scored nine per cent higher in enforcing the laws, and six per cent higher in the areas of providing crime prevention information and providing services to ethnic and racial groups.

Participants were asked whether, given what they knew about policing in the Niagara Region, they thought there should be more police services, even if that might mean an increase in taxes. Residents were split between maintaining the current level of policing (53%) and acquiring more police services (42%). Only two per cent suggested fewer police services were needed. Four per cent expressed no opinion.

An Environics' provincial survey named FOCUS ONTARIO posed a similar question with regard to support for more spending on various services. Their July 1989 edition reported that the highest levels of support were for more spending on environmental protection. Intermediate levels of support existed for health care and roads/highways. Support for more spending on the court system was the lowest of those measured.

In much the same time frame, residents of the Greater Toronto Area were asked about their support for more spending on police services. Thirty-seven per cent said more should be spent; 56 per cent said there should be about the same level of spending.

It must be recognized that there are inherent frictions between the public and the police. Members of the public rely on the police to keep society safe by preventing crimes and arresting criminals, but many people resent what they perceive as too much attention being given to parking and minor traffic offenses. Dislike for certain laws may be transposed into dislike of the police. The result may be that the public has a love-hate relationship with the police. No force can expect to be always popular, but in order to function effectively it must have the confidence of the public it serves.

While realizing that the Commission's survey could produce only a "snapshot" of public opinion in the Niagara Region, I am encouraged by the generally positive results. I believe it is important for the views of the residents of the area to be heard as opposed to only those who have been closely involved in the inquiry process. It would certainly appear that the "average person" has a great deal more confidence in the Force than has been implied by the rumours and allegations of impropriety and wrongdoing raised in the media and before this Commission. Mrs. Joan McKinney, an interested lay person, who had requested permission to attend the workshops and was a valuable contributor to our discussions, stated that since the Inquiry started, "the people in her area felt the scandals had been cleared up and were very satisfied." It may well be that the Inquiry, by revealing through the media that most of these allegations were unsubstantiated, has increased this confidence, but it seems also that the primary source of this confidence is the efficient manner in which the officers carry out their basic policing duties and they are to be commended for their efforts.

Furthermore, although over three-quarters of the respondents knew about the Inquiry and many could cite issues being addressed, very few regarded it as a central concern for their region. The survey's findings are in contrast to the extremely negative media criticism there has been of the Force and its members, both prior to and during the course of this Inquiry.

I conclude that public confidence in the NRPF is not any better or worse than that reposed in other police forces. It would seem that the "crisis" which was perceived by some people to exist at the time of the call for a public inquiry, existed much more in the minds of those people than it did in the minds of the public.

2 MEDIA RELATIONS

One of the terms of reference asked for a report on "the policies and practices of the Force relating to release of information to the news media, and the state of existing relations between the Force and the news media."

I shall deal first with the latter part of the question, that is, the Force's relationship with the media.

During the Inquiry, it became evident that a number of people associated with the NRPF were prone to impart to the media their concerns about rumours of corruption in the Force, and that the media were quite willing to publish these rumours. Unfortunately, news about police corruption sells well; news that the police are doing a good job is not a circulation booster.

As can be seen from other sections of this report, the Board collectively, and/or Mrs. Taylor individually, frequently sought support from the media for some controversial action by way of media interviews or media releases, which sometimes contained slanted or even inaccurate information. This gave the wrong signal to Force members that this was the way to get action. For instance, when Newburgh approached Shoveller about his concerns that his telephone was being tapped, he proposed going to the media. When VanderMeer was concerned about C.'s reported threats on his life, he went to Moon of the *Globe and Mail*, which resulted in adverse headlines. When VanderMeer was upset about the Attorney General's recommendation not to lay criminal charges against Gayder, he sought support for a public inquiry by leaking his critique on the Wolski report to Moon.

The media has had a major role in the recycling of rumours. They cannot be blamed for publishing stories of purported misconduct within the Force that are handed to them by reputable Force sources. However, they might be expected to examine such stories more carefully than they have in the past, and to present them in a more balanced way. Instead, many Force members have felt that the media were unjustifiably "taking shots" at the Force, and the *Standard* was seen as being consistently anti-police.

During the Inquiry hearings, because of the massive volume of evidence the Inquiry produced each day, and the space or time limitations of the media, only the most sensational allegations were reported, and this caused many Force members to resent the media.

I conclude that there has been an uneasy relationship between the Force and the media. Both bodies have important roles to play in service to the public. Most members of the public look to the media as the major source of information about the police, and it is essential that a more positive relationship be built between these two important community bodies. I shall be recommending that, to this end, senior officers of the Force meet with members of the various media, and with senior members of the *Standard* in particular.

I now turn to the question in the terms of reference concerning the policies and practices of the Force relating to the release of information to the news media.

The importance of a return to the philosophy of community-based policing was mentioned earlier in this report. Implicit in this philosophy is the recognition that the police cannot function effectively without the involvement of the public they serve, and must initiate relationships with community organizations and encourage active co-operation of ordinary citizens. In doing so, police authorities must recognize the growth and demand for accountability of police forces. A police force's relationship with the public has never been more important. It is of paramount importance that the Force cultivate good relations with the media to improve communication with the public.

The present NRPF media policies are set out in two documents: Board bylaw 101-89 entitled "Regulations for the Government and Operation of the Niagara Regional Police Force" and the Force's November, 1984, Training Bulletin N°. 78 — "Media Relations."

The section of the Board bylaw relating to information is quite brief and lays down very broad policies from which Force management formulates procedures for disseminating information. It is a good example of the military model of policing. Members of the Force are required to regard all official business as confidential and to refrain from divulging it by any means except under the due process of law, as directed by the Chief of Police or as authorized by Regulations or General Orders of the Force. All lectures, speeches and interviews must be authorized by the Chief of Police. The Chief and members designated by him may release items to the media as prescribed in Regulations and General Orders. All information must be factual and truthful. Information is not to be withheld unless it:

- is likely to prejudice the ends of justice;
- may be of assistance to criminals or suspected persons;
- may cause unnecessary pain or distress to individuals;
- is of a confidential nature;
- would place any person in actual physical danger;
- would disclose the identity of any person giving confidential information;
- is prohibited by law from publication;

It also notes that the identity of persons giving information to the Force may only be disclosed with their approval or by court order.

The 1984 Media Relations Training Bulletin goes into greater detail in outlining the purpose of its media policy and conditions under which information may be released. It declares that all information on any incident shall be made available except where the following conditions apply:

- requests for privacy from the victim or the victim's parent or guardian;
- disclosure which might place persons in actual physical danger or cause them unnecessary pain or distress;
- the identity of persons falling under the *Young Offenders Act*;
- copies of police photos or diagrams or statements made by a suspect;
- disclosure which would jeopardize investigations, the apprehension of suspects or the prosecution of a case;
- disclosure which could breach the confidentiality of police operations;
- results of any investigation procedures, examinations or tests involving a suspect;

- the refusal of any person to submit to any test, except in the case of a test for alcohol impairment;
- opinions or statements as to the character, reputation, guilt or innocence, plea, disposition or points of argument to be presented in court;
- details of a crime which would be known only to the investigator and the offender;
- the identity of the deceased or injured until the next of kin have been notified;

The Bulletin goes on to state that, in using any of the above exceptions, the officer must inform the media representatives when and why information is being withheld. Taking of photographs of suspects may not be prevented (except in the courtroom and its environs) and other photographs in a public place cannot be prohibited unless taking them interferes with a Force investigation. Persons under arrest may not be posed for media photographs.

Provision is made for issuance of Media Identification Cards, and procedures for major incidents concerning media access to public and private property are outlined. Reasons for exclusion are mentioned, but officers are reminded that the presence of news media may be helpful in developing leads, etcetera.

A section entitled "Scope of Co-operation" stresses that Force members must co-operate equally with all media representatives but that co-operation may have its limits. Persons obstructing the Force in performance of its legal duties, particularly its duty to protect life or a crime scene, may be removed from the scene by all legal means, with arrest as a last resort. Media persons who persist in unreasonable demands are to be reported to the Media Relations Officer, who would report the matter to the offender's supervisor.

The Bulletin concludes with an appeal to good sense and level-headedness. It points out that the media should not be viewed as adversaries, and that by following the guidelines and using common sense the officer dealing with the media "will have done a great deal toward improving our image with the media and consequently with the public we serve."

Officers authorized to release information are designated in a 1984 Routine Order. These include all senior officers (inspectors and above), the designated Media Relations Officer (who is the Chief's Executive Officer) and such sworn officers as are appointed by Divisional superintendents. Each superintendent has issued Orders designating appropriate personnel in each Division and Sub-Division. A further Routine Order of 1991 limited the release of personal information given to the media to conform with the provisions of the *Municipal Freedom of Information and Protection of Personal Privacy Act, 1989*. By memorandum, dated January 16, 1992, Deputy Chief Kelly underscored the importance of compliance with Force policy on media releases and reminded members that comments to the media must be restricted to the contents of authorized media releases.

It is within this general policy framework that the daily contact with the media is conducted. It starts with the forwarding of reports from the Divisions and Sub-Divisions to Headquarters in St. Catharines through their computer-based system, ORACLE. A daily bulletin is produced from this information, and is made available to senior officers and to the Criminal Investigation Branch and Uniform officers in the Divisions and Sub-Divisions. Routinely, it is mainly the CIB and the Uniform officers who deal with the media. The Bulletins themselves may contain information which should not be released, so they are not distributed to the media or the public.

At various times, as dictated by deadlines of the media agencies involved, telephone calls will start coming in to the CIB and Uniform staff sergeants, asking for newsworthy events that have happened overnight. The staff sergeant reads from the daily bulletin the brief summaries of incidents he thinks may be of interest. The media agency may use the story, as related by the staff sergeant, or may send someone to headquarters or to the appropriate Division or Sub-Division for interviews and further details. The newspapers are most likely to send out a reporter because of their less frequent deadlines. The radio stations are inclined to use regular calls during the day asking for updates of reports of new incidents. The television stations have their own special needs because of picture requirements. Each of the eight media outlets in the region may call each of the six Divisions and Sub-Divisions each morning, and at other times during the day. Members of the Force spend a great deal of time talking to the media, which fact alone may justify the recommendation I will be making for a full-time media relations officer.

Complications can arise if the staff sergeant on duty (who, after all, is a police officer first and a media representative second), is called away on his regular duties. Messages may be left by the media, return calls are not always made by the deadline time, or at all. Friction may develop with the media, with the results unfavourable to the Force.

The routine goes on throughout the day, with occasional checks by the media with the Divisions and Sub-Divisions. If the Force has something specific it wishes to get out to the media, it will issue a media release or call a media conference. In January, 1991, the Force began transmitting these releases to all area media outlets with facsimile equipment. Evenings and weekends require special consideration when Divisional commanders and headquarters inspectors may not be on duty. In that case the duty officer attempts to cope, but if demands are great, it can be a difficult time for all concerned.

At regular meetings of the Board, the Chief is made available for questioning by members of the media attending the meeting.

It appears that the NRPF media policies cover most matters included in the procedures of neighbouring forces, except in minor details. Its written policy does not mention a channel for media representatives to complain to the Media Relations Officer, but such a channel does exist in practice. No formal distinction is made between pre-arrest and post-arrest news releases, nor is there a specific form for release of information as is the case with some other forces.

Just as important as the actual media policy and practice is the way it is perceived by members of the Force. The Commission retained Professor William Hull of the Department of Politics, Brock University, to provide the Commission, and the November 1989 Commission workshops, with a report on the Force and its relations with the media. Professor Hull's research included interviews with some 40 key people in the Force and in the media in order to gain their impressions of Force-media relations.

On the question of whether mutual trust existed between the parties, both groups were almost equally divided on the affirmative and negative sides. On the question of whether the Force policies and practices worked successfully, Force members were evenly divided, but over two-thirds of the media members thought they were better in theory than they were in practice. Force members committed to the community-based philosophy of policing viewed the media more positively, and tended to regard them as something more than a necessary evil. The more experienced media personnel were less likely to believe that the police deliberately withheld information, but many of the media representatives expressed concern about the consistency of the information being released, especially at the Divisional and Sub-Divisional levels. Press representatives from outside St. Catharines had a perception of favouritism towards the press of St. Catharines, the largest community, and the electronic media perceived a bias in favour of newspapers over radio and television.

Professor Hull also attempted to analyze what press coverage of the Force, by the region's three daily newspapers, the *Standard* of St. Catharines, the *Niagara Falls Review* and the *Welland Evening Tribune*, has been like. He analyzed three two-month periods which might be considered normal, and several controversial events, namely the 1974 Landmark Motel raid, the police video surveillance of the washrooms at the Seaway Mall in 1983 and at the Fairview Mall in 1985, Chief Harris's controversial car purchase in 1985, newspaper articles about hiring of relatives in the *Review* in 1985 and in the *Standard* in 1986, and Chief Gayder's resignation in 1987.

During the "normal" periods, the great majority of items in all three newspapers were routine factual reports of incidents such as break and enters, robberies and motor vehicle accidents. Where these items contained comments about the Force, generally speaking the *Review* and the *Tribune* were either favourable or neutral and, the *Standard* was either unfavourable or neutral.

The analysis of coverage of the controversial events produced a different result. Items in the dailies were more prominent and included editorials and letters to the editor. The coverage was mostly unfavourable or mixed in all three dailies: more than half in the *Review*, nearly two-thirds in the *Standard* and over three-quarters in the *Tribune*.

In summary, the media policies of the NRPF are generally not much different from other comparable forces. They are an attempt to balance the media's legitimate demands for information with the Force's legitimate interest in controlling the release of delicate information. There appears to be some confusion among both members of the Force and of the media about how the policies are to be applied on a day-to-day basis. This, combined with a mutual lack of understanding of each other's role, has caused an undercurrent of mistrust and suspicion. This is unfortunate, for there is much to be gained by both parties from a positive police-media relationship.

The Force must accept that increased openness in all public organizations is an irreversible trend, and is a reasonable expectation of those organizations. Individual officers must recognize that the great majority of reports of their activities are factual, and must avoid judging the media on the basis of the relatively few articles that they perceive as unfair. The police-media relationship is a two-way street — the media expect police co-operation in assisting them to file good crime stories in time for their publication deadline — the police expect the media to give publicity not only to sensational crime news, but also to stories of the many non-sensational aspects of police work related to the Force's day-to-day service to the community. Part of the problem of the perceived loss of public confidence in the NRPF may well have been due to deficient Force-media relations.

Ideally, the media and the police should see one another as partners, not adversaries. However, it must be recognized that the media and the police will probably always have an uneasy relationship, since their interests are often at odds. The media are, after all, in the business of selling news to the public, not just publishing only the news that the police department wishes to disclose. The Force, on the other hand, wishes to keep some control over police information that can be released without jeopardizing its investigations.

The time has come for the police, both as an organization and as individuals, to adopt a more professional approach towards media relations and regard it as an integral part of their expressed commitment to community-based policing.

Crucial to this goal would be the appointment of a full-time "Media Relations Officer." The importance of this was graphically illustrated by the print media's acerbic criticism of the Force's handling of the release (or withholding) of information in the Kristen French murder investigation, largely arising out of the Force's decision to co-operate with a local television station in the reenactment of the French kidnapping, in the expectation that this might result in more information from members of the public. It did result in something like 20,000 telephone and other calls which provided new leads, but also provoked a storm of indignant complaints in the press that the Force had withheld important information to which the public were entitled during the three months following the kidnapping, and then had released it only to the local television medium. Much of the "bad press" could probably have been avoided by a Media Relations Officer who was not burdened with the pressures of the investigation and who understood media attitudes and the inherent rivalry between competing media forms. If there are good reasons for withholding police information, or even for giving preferential treatment to one media form, a timely and frank explanation to the media might avoid, or at least blunt, their criticism.

The more recent adverse media coverage surrounding the NRPF's delay in laying murder charges respecting the French matter against a suspect arrested by the Metropolitan Toronto Police emphasizes the need for a media relations officer who understands media psychology.

A typical job description of the position (adapted from the Hamilton-Wentworth Police Administrative Directive N°. 9/87) might include:

- regular media conferences to disseminate police news;
- coordination of follow-up requests from media personnel;
- arranging media conferences with other Force personnel;
- responsibility for written media releases on Force policy;
- to generate stories of interest from within the Force, or matters affecting the Force;
- responsibility for police/media meetings (perhaps two or three times a year, to include not only senior media personnel but, at least sometimes, working reporters), to air grievances;
- availability for assignment by the Chief of Police or his designate;
- at the scene of a disaster or other major event, to be responsible for the dissemination of information at the scene and its subsequent release to the general media;
- release to the media information of developments in a police investigation, or an explanation as to why information must be withheld.

This job description is given only as an indication of the type of services such an officer might perform. Because of the large area and multiple media centres covered by the NRPF, the Force administration would develop its own job description. The Media Relations Officer might be a civilian familiar with police work or a police person with a full understanding of how the media operate, but it is essential that the successful candidate be of such a personality and experience and understanding of the police and media that he or she could gain the confidence of both.

It is not within my mandate to examine the media's attitude towards the Force, but I trust that the media will respond favourably to any initiatives taken by the Force as a result of this report.

The Force and media are involved in a mutually interdependent relationship, and both are sincerely committed to the service of the public. I am convinced that with goodwill and a genuine renewed commitment to co-operation, past misunderstandings can be forgotten and the positive aspects of the existing relationship be enhanced and expanded not only for the benefit of themselves but the people of the region.

RECOMMENDATIONS

It is recommended that:

1. *The Force in conjunction with the Regional Municipality of Niagara Police Services Board, make a clear declaration of its commitment to a philosophy of openness and co-operation with the media and make the necessary resources available to the media relations function as an indication of this commitment.*

2. *As soon as possible, senior officers of the Force should meet with senior personnel of the Standard to build a more positive mutual relationship.*

3. *At regular intervals, senior officers of the Force should meet with senior personnel and working reporters of all media, to air grievances and to promote mutual understanding.*

4. *A News Release Form and Newsworthy Item Bulletin should be developed with input from the media as to format, timing and method of distribution.*

5. *A full-time media relations officer be appointed by the Force, reporting to the Chief of Police via the executive officer, to coordinate all aspects of the Force's media relations policy.*

6. *All police officers should be authorized to answer media inquiries when they are in charge of minor incidents such as traffic accidents.*

7. *A problem-solving mechanism be established, whereby difficulties which arise out of interactions between Force members and media representatives may be addressed expeditiously.*

8. *The Force implement an effective means of disseminating timely and accurate information to the media such as facsimile transmission and recorded or broadcast messages, which ensures that all media representatives in the region have, in the first instance at least, equal access to information being released.*

9. *The Media Relations Officer establish and maintain an ongoing dialogue with all members of the media involved in police matters,* *including the hosting of informal gatherings, where members of both professions can become better acquainted with each other.*

10. *The Force continue to take advantage of training courses in media relations available at the Canadian and Ontario Police Colleges for selected senior staff, and use graduates of those courses to develop local courses for NRPF members having regular contact with the media. In addition, a training session on media relations, including written directives, and, if possible, a video presentation, should be provided to all members of the Force. Consideration should be given to seconding an appropriate member to the media relations department of another police unit for a brief period.*

3 MORALE

Item N°. 9 of the Commission's terms of reference inquired about the morale of members of the Force. For a variety of reasons, it proved to be, in many respects, the most troublesome to address satisfactorily. Firstly, collection of morale data is difficult. Morale, like beauty, tends to be very much in the eye of the beholder. Secondly, the Commission had no opportunity to attempt to measure and assess the morale of the Force and the factors influencing it as they were prior to the Inquiry itself becoming an influence on morale. The announcement that an Inquiry was being called because of a perceived lack of public confidence in the Force, plus rumours and allegations of misjudgement and wrongdoing made public during the Inquiry hearings through cable television and the other media, did nothing to enhance the morale of Force members. Thirdly, even if an accurate reading could be obtained regarding police morale in Niagara, data from other forces in the province was not available for comparison.

Notwithstanding the difficulties, on two separate occasions, in 1988 and again 1990, the Commission endeavoured to evaluate the level of Force morale, with mixed results. During the latter half of 1988, Commission staff conducted a survey, by mail, of all current and former members of the Force, but only 145 (13.14%) out of 1,081 potential respondents returned the questionnaires. It was recognized that this small sample did not present a basis on which to draw conclusions or formulate recommendations. A further study was conducted by Dr. J.H. McGinnis and Dr. L.M. Coutts of the Canadian Police College, Ottawa, in the summer of 1990. In the second study, over a two-day period, 181 on-duty Force members (133 officers and 48 civilians), selected at random, voluntarily completed a tailor-made questionnaire and participated in discussions with the consultants in groups of from three to 10. However, due to time and financial constraints, both studies were limited in scope and duration, so that too much significance should not be attached to the results. The work of the consultants was excellent, and although I consider that, out of an abundance of caution, I should not rely unduly on the details of the findings, percentages, etcetera, I am satisfied that the general thrust of the findings is accurate and consistent with other information available to the Commission from other sources, including witness testimony.

To begin with, a great deal of what the Commission learned about the morale of the NRPF is quite positive. The Niagara officers are, generally speaking, satisfied with their pay, with most working conditions, with their co-workers, and with supervision, as well as with the basic nature of their work. Civilian members also tend to be satisfied with their immediate supervision and co-workers, with most working conditions, with the basic nature of their work, as well as with promotions. Both police and civilian groups were in the middle-range on issues dealing with training and career development, as well as some working conditions. On the negative side, both groups, particularly police officers, were dissatisfied with senior management of the Force. Police officers were dissatisfied with the fairness of promotions, while civilians were somewhat dissatisfied with their pay.

It must be recognized that, although members of the Force are generally satisfied with the fundamentals of their work, morale is always a concern. However, in the absence of data from long-term monitoring of the Niagara situation, it is possible only to make an informed estimate as to the extent of the problem. According to the consultants (and their view is consistent with the evidence and other information available to me), although the on-going Inquiry has inevitably had a demoralizing effect on the Force, its general morale probably does not differ greatly from other police forces. Nevertheless, morale is a problem and remedial steps must be taken.

The single most important source of information about the morale of the Force comes from its members. Their opinions as to the causes of low morale must be examined before any attempt can be made to design remedial measures. The McGinnis/Coutts study provided the best data available about what the members perceive as the most significant causes of dissatisfaction.

Members were asked to cite, in order of priority, the three issues they considered the most important causes of dissatisfaction. Approximately one-half of the police respondents specified Force leadership as one of the leading causes of their dissatisfaction. About 40 per cent listed promotion, and just over 25 per cent cited budget-related concerns and lack of respectful treatment by superiors. For police officers, four other issues in order of importance were: Force unity, Police Commission (now Police Services Board), training and development, and work environment. Almost half of the civilian respondents mentioned leadership as one of their top three concerns. However, for them, the second most frequently cited factor was work environment, which included concerns regarding leave opportunities, shifts and crowded work spaces. Budget-related issues and respect were each cited by 25 per cent of the civilian respondents. In contrast to their police counterparts, less than 13 per cent of civilians cited promotion as a major source of dissatisfaction. This was followed, in order of citation frequency, by training and development, Force unity and the Police Commission.

Whether these views are justified or not, it is apparent that a considerable portion of the Force membership are dissatisfied with some important aspects of their work. While it is difficult to tell whether these feelings affect job performance, they cannot help but have a negative effect on the administration and operation of the Force.

However, while there are no statistics from other Forces for comparison purposes, my 50 years of legal and judicial relationship with a number of police forces convinces me that the general state of the morale of the members of the NRPF is little different from that of other Ontario forces. Now that the negative influences of the 1987 "crisis" and of the sensationalism of some aspects of the Inquiry are in the past, I would expect the morale of the Force to develop more positively.

RECOMMENDATIONS

It is recommended that:

1. *Following amendments to the promotional system as recommended in Part 1, information sessions, open to all members, be held to outline and discuss the research and principles employed in promotion assessment.*

2. *The promotion system be monitored and evaluated on a regular basis to ensure its continued integrity and fairness, and the results of such evaluations be made available to the Force members.*

3. *Open discussion sessions be held between senior officers and members focused on issues and concerns relating to Force discipline and "employee recognition and reward" with the objective of promoting greater mutual understanding of these concerns, and of arriving at mutually acceptable means for addressing them.*

4. *An internal analysis of the perceptions and attitudes of civilian members be undertaken regarding pay and benefits, in order to explore the nature and reasons of perceived unfairness, and, if warranted, to undertake remedial action to alleviate any existing unfairness.*

5. *A concerted effort be made to address problems relating to senior management and leadership, as perceived by Force members, through emphasis on team-work, inter-group activities and group discussions related to planning and the setting of goals. The focus should be on instilling trust and co-operation amongst all ranks, promoting open and effective communication, increasing the "visibility" and approachability of senior management and its involvement with other ranks, and to provide a forum for discussion and resolution of perceived conflicts between ranks.*

4 PUBLIC COMPLAINTS

Item N°. 7 of the Inquiry's terms of reference refers to "the policies, practices and procedures of the Force and the Niagara Regional Board of Police Commissioners respecting public complaints against members of the Force."

Bill 107, "An Act to revise the Police Act and amend the law relating to Police Services," referred to as *The Police Services Act*, was proclaimed on January 1, 1991, while this Inquiry was still in the hearing stage. Part VI of this *Act*, "Public Complaints," establishes a province-wide mandatory system for dealing with complaints, based on the system formerly in use in The Municipality of Metropolitan Toronto. In light of this, it would be academic to vigorously examine and assess the multitude of complaint resolution processes available and recommend a model to be applied in Niagara Region. Therefore, I shall, by and large, confine this section of my report to the past practices and experiences of the Niagara Regional Police Force's processing of public complaints against members of the Force as compliance with my mandate under the above terms of reference.

A review of the directives of the NRPF since 1971, broadly relating to the subject of public complaints against members, reveals that the first comprehensive system to document, investigate and resolve citizen complaints was introduced on August 6, 1973. By memorandum, then Deputy Chief – Operations, James Gayder, designated a Complaints Officer at the Intelligence Branch to investigate "serious complaints," while those of a "minor nature" were investigated at the unit level. The Deputy Chief – Operations maintained a file on, and kept the Chief informed of, all citizen complaints against individual officers, determined the action to be taken, subject to the approval of the Chief, and caused the complainant and the involved officer to be notified in writing of the results.

Conspicuous by its absence was any form of civilian input into this complaint process which was, at all stages, a strictly internal police procedure. Nonetheless the procedure represented an attempt by the Force's administration to provide citizens with an avenue by which they could bring their complaints, real or perceived, to the attention of the authorities for resolution.

According to the written directives turned over to the Inquiry, it would appear that this system remained essentially unchanged until 1977 when a Citizen Complaint Bureau reporting to the Deputy Chief – Field Operations was established and forms provided by the OPC were introduced. The following year the Board enacted a complaints bylaw, like most of their counterparts in the province, which was inspired by guidelines distributed by the OPC.

This Ontario blueprint was based on a concept devised by retired Judge Réne J. Marin to be applied to the RCMP, with one important exception. Under the Marin concept the RCMP system was to remain largely one of internal control, but an independent Ombudsman would have reviewing authority. The Ontario system followed the same concept, but the Ombudsman's role was to be performed by the OPC. Given the functions of the OPC, it is questionable whether it could be regarded as independent of the police as the Ombudsman contemplated by Judge Marin. This feature was not of course unique to the NRPF's system; it was common to all systems inspired by the OPC's proposal of 1978.

In essence, the bylaw (N° 34-78) operated as follows. An aggrieved citizen could make a complaint at any police facility and minor matters could often be resolved at this point. Unresolved complaints were forwarded to the Citizen Complaints Bureau for investigation and the facts submitted to the Chief of Police, or his designate, for determination and action, if required. Generally, the involved officer was informed of the complaint at the outset and both he and the complainant were notified of the results of the investigation. Complainants were also advised that, if dissatisfied with the action taken, they would, among other things, upon application in writing, be able to present their complaint to the Board and that a final appeal could be made to the OPC. Prior to hearing the complaint and rendering its decision, the Board would have access to the Chief's report on the matter. Each significant step in the process was recorded in writing and statistics were reported to the OPC semi-annually.

The provincial scheme of 1978 formed the basis of the Force's complaint system until the passage of the *Police Services Act*, but there were some noteworthy changes. Many of the amendments over the years have centred on the Board's role as an appellate body in the complaint process. The Board's obligation to grant a hearing on request, to even apparently vexatious complainants, has been eliminated by various review mechanisms since 1982. Again, beginning in 1982, the Board hearings have been formalized and their fairness improved by, among other things, introducing full disclosure and ensuring that the involved officer may be represented. Two significant changes were introduced in response to recommendations which flowed from an OPC investigation in 1984, viz: to avoid any perceived conflict of interest, the Citizens' Complaint Unit would report to the Chief via his Executive Officer; and a requirement to keep the complainant and the involved officer regularly informed of the status of the investigation.

The foregoing process and the improvements which evolved since 1978 constituted an adequate means of addressing the issue of public complaints against members of the Force. However, the use of the Board to inject some civilian input into the system inadvertently created a very serious flaw in the administration of discipline on the Force. If, after a Board complaint hearing, an involved officer was convicted under the *Police Act*, the officer's appeal would also be heard by the Board. The conflict is obvious in that the Board could find itself reviewing its previous decision regarding the same circumstances. The Niagara Regional Police Association expressed concern about this issue over the years, as did the Board, but no solution was reached. The new *Act* has resolved this problem.

Unfortunately, there have been serious problems with reliability and accuracy of the numerical data available with respect to complaints in Niagara, and throughout the province, so that sophisticated statistical analysis was not possible. However, research indicated that with respect to complaints in terms of numbers received and the type of disposition, the NRPF did not differ to any great extent from other Ontario forces of comparable size. Further, the average number of complaints, 120 per annum in recent years, is very low, relative to the vast number of interactions between police officers and members of the public.

During a July, 1989 survey of public confidence in the NRPF conducted for the Commission by the Environics Research Group[1], Niagara residents were asked what they would do if they had a complaint against the police. Forty-three per cent say they would go directly to the police, and 24 per cent chose some level of government, 8 per cent a lawyer, 4 per cent some other action, 3 per cent would do nothing and 17 per cent had no opinion. Overall, almost three-quarters (73%) were confident that their reported course of action would lead to a fair resolution of the matter. Those who say they would complain to the police or a government agency indicated a great deal of confidence that their complaint would be resolved fairly. Nevertheless, it is perhaps significant that some 57 per cent of the respondents did not choose to take their complaint to the police.

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[1] See p. 305.

As previously indicated, the public complaints provisions of the new *Police Services Act* expands, with minor modifications, a system which has been operating in Metropolitan Toronto since 1981 as the *Metropolitan Police Force Complaints Project Act, 1981* and, subsequently, the *Metropolitan Toronto Police Force Complaints Act, 1984*. This complaints legislation governs not only all Ontario municipal police forces but the OPP.

Under this legislation the initial stage of the complaint process i.e., receipt, investigation and resolution of the complaint retains essentially the same features as the previous system in Niagara. Although the Police Complaints Commissioner, who is entirely independent of the Force, may intervene in exceptional circumstances his role is usually to closely monitor the processing of the complaint. The Commissioner may make recommendations concerning police practices, or procedures, to prevent the recurrence of problems encountered by complainants.

Once the Chief renders his decision the complainant may request a review of the matter by the Commissioner who, if he believes it is required in the public interest, may refer the case to a Board of Inquiry. Board of Inquiry tribunals consist of one or three civilian members depending on the seriousness of the complaint and both the officer and the complainant may have legal representation at their hearings, where evidence is led by a lawyer representing the Attorney General. If the Board concludes on clear and convincing evidence that the officer is guilty of misconduct it may impose penalties, which range from reprimand to dismissal.

This new scheme has a number of advantages over the previous system. Firstly, the confusion surrounding the appellate function of the Niagara Regional Board of Commissioners of Police has been resolved. Secondly, without removing the opportunity of the Force to investigate complaints and discipline its members, the scheme provides for meaningful civilian participation at every stage of the complaint process. The new Police Complaints Commissioner has investigative authority and Boards of Inquiry can not only adjudicate but impose discipline directly, powers not previously enjoyed by the Board of Commissioners of Police. What is perhaps most important, a monitoring and review agency as well as an adjudicative body, which are not only civilian but are in every respect independent of the Force, have been established to resolve public complaints.

In practice in Metropolitan Toronto the Public Complaints Commissioner, as he was known under the former legislation, rarely disagreed with the decision of the Chief and relatively infrequently injected himself directly into the complaints process. Nonetheless, his capacity to do so in addition to his monitoring role greatly enhanced public confidence in the process and there is no reason to believe it would do otherwise in Niagara. On the other hand, particularly since a Metro officer was ordered to resign by a Board of Inquiry in 1985, considerable resistance to the process has emerged from the police community, which seems to perceive the system as unfair. Yet the fact remains that a mechanism to openly address legitimate complaints from the public about police conduct is absolutely essential, not only as an integral facet of police accountability but for the fostering of positive police community relations, without which the police cannot appropriately function.

In his submissions, one of the counsel requested an opinion on the circumstances under which a charge against a police officer should be laid under the *Police Services Act* as opposed to a charge under the *Criminal Code*, since it is sometimes implied that favouritism is shown police officers by laying *Police Act* charges instead of criminal charges. This may have arisen as a result of criticisms, voiced in evidence by Gerry McAuliffe, that favouritism was indicated when one officer is charged under the *Police Act*, and allowed to resign, thus avoiding any penalty, and another officer is charged under the *Criminal Code* with its more severe penalties. McAuliffe also expressed concern about the situation where an NRPF officer had been charged with a criminal offense, was suspended, and, for the two and a half years it took to dispose of the case, drew his pay, and in McAuliffe's words "Did absolutely no work for two and a half years." In the end, the officer was found not guilty and returned to his duties.

It should be understood that, under the *Police Act*, police are actually subject to a higher standard of conduct than are civilians, and they may be disciplined for activities for which no civilian would be charged. Also, it is sometimes a matter of pragmatism to lay a *Police Act* charge instead of a minor *Criminal Code* charge, if successful prosecution is at all doubtful, since a criminal charge would usually result in suspension of the accused officer for the many months it may take for the charge to be finally disposed of. Meanwhile, the force suffers a reduction in strength, and the officer remains off-duty at full pay. Thus, the laying of charges under the *Police Act* is sometimes a solution to the second concern raised by McAuliffe. It is true that, if an officer resigns before a *Police Act* charge is finally disposed of, the charge lapses, (since the *Act* applies only to serving police officers), but the result is that the officer loses his livelihood.

However, *Police Act* charges are not appropriate in situations involving activity that is clearly criminal, and of a serious nature. In such cases, the appropriate *Criminal Code* charge should be laid.

5 LABOUR RELATIONS

The terms of reference inquire about the existing relations between the Force and the Board. Most of this subject is dealt with in the section on Role of the Board. It was examined in the consultant's report prepared by Professor Jackson and by the workshop that followed. Since the hearings about Labour Relations matters were concluded, a new Police Services Board has been appointed, and I understand management-labour relations have improved. I accordingly address the recent history of the subject only in general terms.

James Gayder was appointed Chief of the Force on January 1, 1984. His predecessors had reputations as disciplinarians, and I infer that they had resisted involvement by the Police Association in the administration of the Force. Gayder had come up through the ranks of the St. Catharines Force, a relatively small Force compared to the NRPF, and was affable and easy-going. His approach to labour relations was very different from that of his predecessors. He established a good relationship with the Association and its long-time Administrator, Ted Johnson, and he often discussed with Johnson matters of mutual concern.

Allan Barnes, who had a background in labour relations, became chairman of the Board in 1985, and he followed Gayder's informal approach to the Association and its administration. Two innovations resulting from the dialogue between the Chief and the Association, namely an informal discipline process and a compressed work week, proved very popular with the Force's rank-and-file.

In January 1986, three new Board members were appointed by the province. One of the new appointees, Mrs. Denise Taylor, took her duties very seriously and devoted an unusual amount of time and energy to her new role. Mrs. Taylor had a reputation as an independent, strong-willed individual, and her actions in interviewing individual Force members about Force conditions, without the knowledge of the Chief, caused concern to the Association. Such approaches were unprecedented, and in the Association's view violated the spirit of the *Police Act* and placed the Force members in an awkward position.

The Association also resented what it saw as Mrs. Taylor's inclination to publicly criticize the Force through the media. Because of her inexperience in police matters, they felt she did not understand policing and its problems, and that her criticisms were based on rumour rather than evidence. Gayder's suspension and subsequent resignation was seen as endangering the new positive labour relations climate that had developed under Gayder.

According to Johnson, the Police Association Administrator, the good relationship between the Association and senior management, and between the Association and the Board, deteriorated following Gayder's departure, to the extent that the Association stopped inviting the Board chairman to its annual dinner, and at the same time made Gayder an honourary member.

In March 1988, James Inman, a civilian with personnel experience, was appointed to the new post of Chief Administrative Officer, and he took over the labour relations functions of the Board and the Chief. In September 1989, Diane Pay, a lawyer with extensive labour relations experience in the education sphere, became Director of Human Resource Services, with responsibility for labour relations. My information is that she has demonstrated skill and sensitivity in labour relations, and has gained credibility with Johnson, with whom she regularly communicates.

At the Commission's workshop in the fall of 1989, the Commission's consultant, Professor Richard L. Jackson, delivered an excellent report on Labour Relations, and I recommend that anyone interested in the history and problems of labour relations in the NRPF should obtain a copy.[1] During the workshop, points of view were exchanged between the Association and Board representatives, which appeared to be helpful. I understand that, following the Commission workshops, the relationship between management and Association showed some improvement, and management appeared to accept the fact that the Association had a bona fide interest in Force management issues that affected the membership. Johnson and Shoveller began to contact one another in matters of mutual concern, and Shoveller began using space, set aside for the Chief's messages, in the Association newsletter. In January 1990, the Board hosted an informal gathering attended by the Association's board of directors, but unfortunately no further meetings followed.

In June 1992, the new Board met with the directors of the Association. The meeting allowed an exchange of views, and the parties agreed to meet every three months. It is to be hoped that this is a signal that the poor labour-management relationships that have long persisted between management and the Association (except perhaps for the Gayder years) will continue to improve.

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[1] See p. *xx*.

Generally speaking, it is management which is in the best position to change labour-management relationships for the better, and it is important that the new Chief and the Board seize the initiative in that regard. They must be prepared to recognize that the Association is an equal in the bargaining process, and has a statutory right and obligation to act on behalf of its members, not only in bargaining, but in management issues which affect its members. The Association, for its part, will have to adjust its expectations in light of the present economic conditions, and understand the practical and financial problems that limit management's ability to fulfil the Association's requests.

With the new Chief and a relatively new Board, and with a more flexible and conciliatory approach exercised by each party toward the other, it should be possible to enter into a new relationship of mutual trust and respect, which can only result in great benefits for the Force and the public.

RECOMMENDATIONS

It is recommended that:

1. *The parties work constructively and co-operatively at regularly scheduled meetings of the labour-management committee to deal with an entirely open agenda.*
2. *The Chief Administrative Officer and his staff take initiatives to establish more regular communication with the Association.*
3. *Particular attention be given to the labour relations philosophy, experience and skill of candidates during the selection process for senior officers.*
4. *The Solicitor General include police labour relations as a component of the required training program for members of Police Services Boards.*

6 RECYCLED RUMOURS

The introduction to vol. 1 of the "James Arthur Gayder Brief" forwarded to the Attorney General referred to the creation of the NRPF on January 1, 1971, and stated: "Almost from its inception, the Force experienced problems and allegations of wrongdoing ...." As early as January 1972, a Niagara Falls alderman was calling for an inquiry into the Force. As we have seen, there abounded within the Force rumours of impropriety, most of which, on close examination, turned out to have no factual foundation. A member of the OPC told the Inquiry: "... there's an old cliche in policing, if there's not a rumour by 10.00 o'clock someone will start one ...." However, while there may be a natural tendency in any group of people constantly working together to share "locker room gossip," it surely behooves a police officer to demand a considerable measure of proof before passing the rumour on to the media or to a member of the Board.

How do these rumours start, and how do they attain credibility? A great deal of police work must be secret, or at least confidential. Perhaps this is one of the reasons suspicion and rumours seem to abound in police forces. Some rumours are often originated by malcontents, or as a result of jealousy or of a grudge. Most are the result of misinformation or misunderstanding; a minority have some factual basis. Another fertile source of rumours in police forces, just as in other fields such as government, business, or education, is the suspicion that management gives special consideration to friends and relatives in hiring, job selection and promotion.

Many rumours have a flimsy base, but gain credibility by repetition. Commission counsel calls it "Recycling." Force counsel calls it "Networking." It often starts by a communication to, or an observation by, person A, which leads to a suspicion that something improper has occurred. A conveys the suspicion to B; B passes it along to C; (people love to appear to be "in the know"); C tells D; D may be sceptical, but then, in conversation with A, hears the same thing. D, concerned, asks B about it, and B says he already knows; that he got it from "the horse's mouth." D is then convinced that, having received the same information from three separate sources, it is probably true.

It has been suggested that one of the reasons behind the continued circulation within the NRPF of the rumours and allegations may have been the factionalism already referred to. As William Reed, a knowledgable local criminal lawyer, testified: "If you were the Niagara Falls faction, you wouldn't trust the St. Catharines faction. That was one of the problems that many officers discussed, the office politics."[1] However, the rumours and allegations appear to have been circulated by a fairly small number of officers and a few non-Force persons, and many police personnel could not be considered as part of either faction.

The evidence disclosed various examples of the manner in which rumours appeared to be validated by information from more than one source. Ronald Brady, counsel for the Police Association, and also at one time solicitor for VanderMeer, on being approached by Mrs. Taylor, told her of various problems within the Force. Most of these he had heard from VanderMeer and Peressotti, particularly the apparent threat on VanderMeer's life. Gill gave Mrs. Taylor similar information, and she then heard many of the same things from Sherriff, unaware that much of the information came to Sherriff from Gill, VanderMeer and Peressotti. Sherriff was the senior discipline counsel for the Law Society of Upper Canada.

It can be understood why Mrs. Taylor honestly believed there was something radically wrong in the NRPF. She, in turn, advised Sherriff of many of the things she had heard, including the VanderMeer death threat. Neither was aware that an informant, wearing a body pack, had recorded C., the alleged threatener, explaining that by "frying a cop" he meant humiliating VanderMeer. It was the death threat, apparently left uninvestigated by senior Force members, together with VanderMeer's complaint that he had been taken off the investigation of G.H. (the lawyer being investigated for laundering organized crime money), and G.H.'s statement to Sherriff that he had influence through Deputy Chief Walsh that would remove VanderMeer from the investigation, that convinced Sherriff that the Force was being infiltrated by organized crime. Sherriff was not aware that VanderMeer's temporary "removal" from the investigation had arisen from an altercation between VanderMeer and Chambers, regarding VanderMeer's request to be assigned a car and be relieved of all other duties for a further six months. Nor was he aware that G.H.'s only connection with Walsh was the presentation to Walsh of an award to the NRPF by G.H., as president of a local club, and a brief conversation about a legal matter. Strengthening the suspicions of both Mrs. Taylor and Sherriff was information received from Peter Moon, most of which Moon had heard from VanderMeer.

Other examples of the "recycling" of rumours can be seen throughout the evidentiary portions of this report. One that kept cropping up was that regarding Gayder's gun collection. In 1977 there were discussions between D.B. of the RCMP and Sergeant Ryan about the Gayder gun registrations. In 1983, Chief Harris had the registrations checked out in relation to the DeMarco gun incident, and later that year the OPC received a copy of them anonymously in a brown envelope. In November, 1983, Mel Swart raised the matter in the legislature; in June, 1984, DeMarco and D.B. gave a copy of the registrations to McAuliffe and McAuliffe made two broadcasts in July referring to Gayder's guns; in September, 1984, the OPC completed their investigation finding nothing illegal about Gayder's collection, but the full report was not published. In January, 1985, VanderMeer and Peressotti advised the OPP of the allegations, and the matter was included in the Project Vino investigation. In the spring of 1986, a copy of the registrations was sent anonymously to the regional councillor, Mal Woodhouse, and Woodhouse sent them to the Solicitor General, and gave copies to Mrs. Taylor. In the summer of 1986, Carol Berry told VanderMeer about her brother moving boxes of weapons into closet 374, on Gayder's instructions, and that fall VanderMeer told Mrs. Taylor of his suspicions about Gayder's guns. In January, 1987, Mrs. Taylor told Moon and her lawyer, Dunlop, of her concerns about the guns. On March 6, 1987, the *Hamilton Spectator* sent Shoveller copies of some of Gayder's gun registrations which they had received anonymously through the mail. Gayder's guns became the focal point of the IIT investigation and appear to have been the main reason for the calling of this Inquiry. The persistent resurfacing of the allegations, in spite of the conclusions of two separate investigations that there was no illegality, illustrates the difficulty of terminating rumours and the public's appetite for them.

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[1] Inquiry transcript, vol. 141 (Jan. 11, 1990):73.

Thus, for more than 10 years, rumours kept circulating about improprieties in Gayder's gun collection — rumours which were substantially unfounded, repeatedly investigated, and yet nevertheless persistently resurfaced. The atmosphere in the Force which made it possible for this and all the other rumours to be "recycled" in this fashion was one of the most significant problems which this Commission has examined.

It is to be hoped that members of the Force who read this report and recognize the weakness of the factual background of most of the rumours investigated, will, in future, examine more critically rumours and allegations of impropriety within the Force before passing them on. Without the co-operation of the members of the Force, there is little this Commission or the Force management can do to prevent the dissemination of such rumours except to ensure that when such rumours surface, they are dealt with promptly, openly and effectively, and that the results are made known. If the recommendation in Part II of this report for a special provincial investigation unit is accepted, allegations of serious misconduct would be referred to that unit.

The Force must establish a clearly defined policy discouraging "rumourmongering," and a message must be sent to all Force levels that such conduct is unacceptable. The policy must ensure that allegations of misconduct are, through investigation, laid to rest and never resurrected. It goes without saying that senior levels must not only not participate in the dissemination of rumours, but must not be seen to condone them. As an example, it was quite improper for Deputy Chief Shoveller to send Sergeant Newburgh, who suspected Gayder was having Newburgh's telephone wire-tapped, to speak to Mrs. Taylor about it, since Mrs. Taylor was also suspicious because she had heard "clicking noises" on her telephone line. If there was any substance to the suspicion, an immediate investigation of it should have been commenced, rather than contributing to its spread.

During the hearings, it became evident that some of the false allegations came, in part at least, from retired officers. Section 45 of the *Police Services Act* requires an oath of secrecy by a police officer, but, since the *Act* applies only to police officers unless otherwise specified, it is doubtful whether the oath of secrecy survives the officer's departure from the Force. It is recommended that consideration be given to a provision that the oath continues to be effective after departure from the Force.

If Force members have genuine concerns, they must take them to a superior officer, who must ensure that they are dealt with through the proper channels. This would entail prompt investigation within the Force, but upon the implementation of the recommendation made in Part II for a corrupt practices unit, major matters will be referred to it. Until such a unit is available, the matter would have to be dealt with by an internal affairs unit whose members had been carefully screened to ensure credibility with the Force and the public. However, as has been seen, internal investigations are almost invariably viewed with suspicion. Because of these concerns, I reiterate my recommendation for a special investigation unit.

RECOMMENDATIONS

It is recommended that:

1. *Force members be encouraged to immediately report, to a designated senior officer, rumours or allegations of improper conduct on the part of a Force member. Such rumours or allegations be promptly investigated and dealt with, and the results be made known. If the allegation is one of corrupt conduct, it should be referred to the special provincial corrupt practices unit recommended in Part II of this report.*

2. *Dissemination of rumours (except to a senior officer in accordance with the previous recommendation) should not only be discouraged, but persistent rumourmongering should be subject to disciplinary proceedings.*

3. *Consideration be given to amending the* Police Services Act *to provide that the oath of secrecy required by s. 45 of the* Act *continues to be in effect following the officers departure from the Force.*

PART V

FINIS

1 Why So Long? — Problems and Frustrations of an Adversarial Inquiry

2 Conclusions

1 WHY SO LONG? – PROBLEMS AND FRUSTRATIONS OF AN ADVERSARIAL INQUIRY

From its inception, the Inquiry was beset by delays. Some were unavoidable due to the extremely broad terms of reference which required an examination of the whole operation of a new and relatively inexperienced regional police force throughout its 20-year history. Some were due to the fact that, from the start of the hearings, several of the parties took a very adversarial and sometimes bitter confrontational approach to one another. Some were due to the reluctance of some individuals and organizations to co-operate with the Commission investigators, and some were due to the insistence of some parties to go down avenues that much later turned out to be dead-ends.

Most counsel were responsible and co-operative. Unfortunately there was a marked lack of co-operation and openness on the part of a small minority which greatly prolonged the Inquiry. This was displayed to a greater or lesser degree with almost every witness, almost every day, and on almost every subject.

Witnesses were cross-examined endlessly, apparently in the hope that if counsel kept digging, something favourable to their client would eventually emerge. Attempts to limit cross-examination resulted in long arguments in justification of the questioning, with suggestions that limiting cross-examination would give the appearance of a cover-up. As a result, it was often necessary for Commission counsel to call several witnesses to prove a point where, in ordinary circumstances, one would have done.

As already indicated, I accept the usefulness of television in informing the public by way of telecasting the proceedings of a public inquiry, and the benefits outweigh the problems. Nevertheless, in an adversarial type of inquiry, there are disadvantages. In addition to the delays caused by some of the obfuscation and lack of co-operation as outlined above, there was an overall problem that some counsel appeared to be frequently playing to the press and television cameras on behalf of their clients, rather than eliciting relevant evidence for the benefit of the Commission. This often took the form of pursuing lines of questioning, phrasing questions or making statements that appeared to be more relevant to the public telecast and to tomorrow's headlines than to the purposes of the Commission.

Counsel were frequently at each other's throats. Unnecessarily caustic comments were usually made unexpectedly and were gleefully recorded by the media before they could be stopped. Because of the wide-ranging nature of a public inquiry, and the fact that many rules of evidence do not apply, warnings had little effect and usually produced a protracted argument about the relevance of the matters objected to, thus further delaying proceedings. Directions to abandon a seemingly irrelevant attack on another party, or an apparently self-serving line of questioning by some counsel, inevitably met with a submission, with one eye cocked to the media, that the relevancy would reveal itself in due course, and that the Commission "would surely not want the public to think there was a cover-up." Often included was a veiled threat that counsel would take a position that the Inquiry was a "whitewash" if the Inquiry did not go into the areas which counsel was attempting to explore, and an assurance that counsel was only trying to "leave no stone unturned."

Such conduct did little to advance the Commission's objects, and repeatedly delayed the Inquiry by inevitably provoking reaction from counsel for the person attacked, followed by much bickering and eventual retaliation. The possibility, frequently hinted at, that rulings restraining such conduct could lead to even greater delays and expense through appeals to Divisional Court (some of which were actually commenced), made it difficult to control the problem, since months of delay and unjustifiable expense inherent in such applications could effectively derail the Inquiry, and that may well have been the goal of some such actions. As a result, the Inquiry was forced to accept the "leave no stone unturned" position, and to chase down many blind alleys.

In "Role of the Board" Part B, I have outlined some specific actions by certain counsel which prolonged this Inquiry.

Another example occurred just as we were about to conclude the evidentiary part of the Inquiry. On August 20, 1990, the hearings were adjourned to September 10, 1990, for the filing, at that time, of certain briefs, and submissions in regard to them, and it was announced that it was expected that final submissions on the last phase of the Inquiry would be filed on October 2, 1990. However, in mid-morning of September 12, 1990, as we were about to adjourn the hearings pending final submissions, Mr. Rowell, counsel for Sergeant VanderMeer, without any notice to Commission counsel, appeared for the first time in months to make a lengthy public statement. He accused Commission counsel of professional bias against his client in having a "hidden agenda" of deliberately not calling evidence favourable to his client, of being after his client's job, and of not providing to him and other counsel all transcripts of interviews of all witnesses interviewed by Commission investigators regardless of their perception of their relevance or credibility. He referred in particular to a transcript of an interview of D.B. (the ex-RCMP constable), relating to his purported knowledge of the source of some of ex-Chief Gayder's handguns, which evidence, counsel stated, would, "if true, overwhelmingly vindicate the position that my client has taken from the beginning, and that it has been buried is of incalculable harm to my client's position."

Predictably, this statement, characterized by one counsel as "blindsiding Commission counsel," created a considerable sensation in the media since it was carried live on cable television and garnered headlines in the press. As a result, instead of winding up the Inquiry as expected, the Commission investigators were redeployed and spent several weeks rechecking the statements of D.B. which they had previously discounted, and in interviewing the other witnesses affected by those statements. Full transcripts of all interviews were delivered to all counsel, and the Inquiry resumed on October 23, 1990. Four weeks of evidence on the allegations followed, including D.B.'s admission under cross-examination that some of his earlier evidence had been a "total fabrication." As will be seen from my report of the "D.B."[1] phase of this Inquiry, it disclosed no credible evidence that advanced the objects of the Inquiry, or, for that matter, of Sergeant VanderMeer, in any way, and I concur with the opinion of some other counsel that it was a complete waste of two months of the Inquiry's time. Unfortunately, once Mr. Rowell's sensational charges and insinuations of a cover-up had been made, followed by the inevitable media reaction, the allegations had to be fully explored.

In the end, after hearing the evidence, even Mr. Rowell did not rely on D.B.'s credibility, but submitted that it was improper for Commission counsel to discount or discard any transcripts of interviews obtained by the Commission investigators on the ground of irrelevancy or lack of credibility without first circulating them to all counsel for their comments, a submission with which I completely disagreed.

In September, 1990, we had had nearly two years of evidence, and most counsel were anxious to make their final submissions and wind up the Inquiry without further legal manoeuvres. It is my opinion that, instead of being sidetracked by the unproductive D.B. episode, had final submissions been called for in October or November, 1990, as announced, we probably would not have been faced with a further year-and-a-half delay while counsel fruitlessly litigated the question of whether my report could include findings of misconduct. I also found it rather inconsistent that Mr. Rowell, who frequently complained that he was not receiving full disclosure, (although disclosure by Commission counsel was immeasurably greater than anything I have ever seen in my 28 years on the Bench), failed to follow the accepted custom amongst lawyers of disclosing to another counsel their intention to make personal charges against him in order to allow that counsel to consider his answer. This is particularly so in view of my ruling of September 6, 1988, that counsel who wished to call their own witnesses were free to do so, subject to the requirement that they provide other counsel with disclosure of the gist of the proposed evidence in the same manner as Commission counsel was doing.

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[1] See p. 50.

It should be pointed out that during the summer of 1990, Sergeant VanderMeer, by his own choice, took no part in the proceedings. In late June, 1990, Sergeant VanderMeer and Ms Dunlop, who at that time was appearing for him, had generated much publicity by walking out of the hearings protesting that Ms Dunlop was being unfairly restricted in her cross-examination, and from exploring matters I had ruled irrelevant. The September 12, 1990 speech by Mr. Rowell was the first the Inquiry had heard from Sergeant VanderMeer or his counsel since that time. Ms Dunlop later returned to the hearings, without explanation, and participated during the evidence of D.B. and the other related witnesses.

On October 11, 1990, Ms Dunlop attended a meeting of all counsel where the Notice provisions of s. 5(2) of the *Public Inquiries Act* were discussed. All counsel agreed that the final submissions would provide compliance with that section, except that Ms Dunlop took no part in those discussions. Then, after the conclusion of evidence and when all counsel were preparing their submissions, Sergeant VanderMeer's counsel began taking the position that the Notice requirements had not been complied with. Eventually a motion was brought. When I ruled against their position, Sergeant VanderMeer joined with the Board in an expensive application which was rejected by the Divisional Court. All of this delayed the Inquiry by more than a year.[2] I have commented above in my chapter, "Role of the

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[2] For more details on this see "Role of the Board." See also my rulings of September 3, 1991 and the ruling of the Divisional Court, dated March 31, 1992, all of which are included in Appendix I.

Board," on the unusual aspect that the Board and Sergeant VanderMeer were represented by one counsel and acted in concert on that application.

A public inquiry such as this one is mandated to examine a broad range of potential problems and to come up with recommendations for possible solutions. It is not a trial. However, some of the parties before this Inquiry treated it as if it was a trial, and took an adversarial stance throughout. While many of the examples which I have highlighted here related to Sergeant VanderMeer, the problem was by no means restricted to him. Much of the Inquiry was conducted by some of the parties on an adversarial basis, taking shots at each other in the arena of the Commission. When the Commission attempted to intercede, or if it appeared that it might criticize some of the parties, those parties in turn began criticizing the Inquiry itself. The media and Divisional Court thus became weapons in the arsenals of those carrying out these campaigns.

This conduct cannot be explained simply on the basis that the counsel responsible were more familiar with adversarial proceedings. Rather, I conclude that it was a symptom of an underlying problem which has plagued this Force for a considerable time. Strong animosities existed between parties, who took every opportunity to advance those animosities at the expense of the Inquiry and the Force it was there to study. Unusual relationships existed, which, when coupled with the frictions between the parties, resulted in interest groups protecting each other instead of working towards the good of the Force. The Inquiry, with all the media attention it attracted, provided a forum in which these long-standing problems could be magnified and exhibited before the public.

One of the most significant problems which I have identified in the NRPF is that, in certain sectors, there was an atmosphere where individual or group animosities were allowed to fester and, combined with self-interest, to take precedence over the public interest and the good of the Force. The Inquiry became a focal point for those animosities, with the result that what should have taken about two years ended up lasting more than five years. The rest of the Force and the public it serves have paid the price.

Individuals may come and go, but it is important that the atmosphere referred to above be corrected. It is hoped that the issuing of this report and the many recommendations within it will go a long way towards providing a solution. Strong leadership will be required to set a new standard for this Force in the years ahead.

2 CONCLUSIONS

At the outset of the Inquiry, it appeared to me, and apparently also to the public, that the problems of the NRPF centered around improprieties in connection with guns and the Force garage, and possibly infiltration of the Force by organized crime. After intensive investigation, and months of exhaustive examination of the information produced by the investigation, it became clear that the rumours and allegations of corruption were not supported by the evidence. Nevertheless, the long and expensive exercise of permitting minute examination of the evidence by all interested parties in full view of the public was necessary to dispel the cloud of suspicion that had plagued the NRPF throughout its existence. No investigation could have been more complete, and I am grateful to the seven dedicated and talented officers from the Metropolitan Toronto Police Force who followed up and reported in great detail upon every rumour and allegation that was brought to their attention. No examination of those reports by the counsel representing many varied interests could have been more thorough. Counsels' frequent demand that "no stone be left unturned" became the watchword of the Inquiry in its effort to lay to rest, once and for all, the persistent and often poisonous rumours that had caused some loss of public confidence in the Force. No counsel suggested in final submissions that the investigation was less than thorough and complete.

Human nature is such that, at first blush, there may be disappointment in some quarters that this lengthy and expensive Inquiry failed to uncover corruption, and that no one has been "nailed to the mast." There was no evidence to justify any such finding. Unfortunately, it was probably not clear to the public that, as it turned out, the Inquiry was called, not to look into wrongdoing, but to look into rumours of wrongdoing. In their book "Greenspan," the authors, Edward Greenspan and George Jonas, in discussing public inquiries observed, that "The big headlines will be made by the accusations, while the answers, no matter how convincing, will usually be printed on the back pages of the newspapers much later." The Niagara situation illustrates that the result can be unfortunate for the individuals who are the subjects of the headlines. However, what is important to the public is that the Inquiry make the answers known.

The preamble to the Order in Council implicitly expresses the hope that the Inquiry will restore public confidence in the Force by answering the public's concerns, and my conclusion that there is no evidence of corruption should accomplish this task.

However, instead of corruption, the Inquiry did reveal serious problems which undermined the efficiency of the Force. These included: 1) An atmosphere within the Force of suspicion and mistrust of senior officers; 2) A failure on the part of the Board to recognize its proper role; 3) A poor relationship between the Board and some of its senior officers; 4) Management styles and techniques carried over from the small municipal forces of the 1960s which were no longer appropriate for the larger regional force of current times; and 5) An atmosphere where individual differences were allowed to fester and take precedence over the good of the Force and the public.

It is hoped that these shortcomings can be overcome through lessons learned during this Inquiry, and by implementation of the Commission's recommendations. I am satisfied that the Niagara Regional Police Force is a good one, and I was impressed by the competence and dedication of its members and their concern for their Force. It is tragic that the reputation of a fine force could be seriously damaged by the rumours that circulated continually both within the Force and amongst the public. I assure the public that rumours of corruption in the Force and of infiltration by organized crime have no foundation in fact, and that the Niagara Regional Police Force is staffed by officers and civilians who are competent and dedicated, and who are prepared to do their part in restoring confidence in their Force. With the appointment of a new Chief, who comes to the Force uninhibited by the factions and jealousies faced by former Chiefs, the NRPF is making a new start. I appeal to the members of the NRPF and to the members of the public to give him their full support, to take pride in the excellence of their Force, and to do their part in putting an end to the type of unsubstantiated rumours that have done so much harm to the Force in the past.

APPENDICES

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APPENDIX A
Order In Council

Ontario
Executive Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS concern has been expressed in relation to the operation and administration of the Niagara Regional Police Force, and

WHEREAS the expression of such concerns may have resulted in a loss of public confidence in the ability of the Force to discharge its law enforcement responsibilities, and

WHEREAS the Niagara Regional Board of Commissioners of Police has asked the Government of Ontario to initiate a public inquiry into the operation and administration of the Force, and

WHEREAS the Government of Ontario is of the view that there is need for the public and members of the Force to have confidence in the operation and administration of the Force, and

WHEREAS it is considered desirable to cause an inquiry to be made of these matters which are matters of public concern,

NOW THEREFORE pursuant to the provisions of the Public Inquiries Act, R.S.O. 1980, c.411, a Commission be issued appointing the Honourable Judge W.E.C. Colter who is, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization, to inquire into, report upon and make recommendations with respect to the operation and administration of the Niagara Regional Police Force since its creation in 1971, with particular regard to the following:

(1) the hiring practices and promotional processes of the Force;

(2) the storage and disposal of all property seized or otherwise coming into the possession of the Force during the discharge of its responsibilities, with particular emphasis on the storage and disposal of firearms;

(3) the policy and practices of the Force with respect to the use of police or municipal resources and any use of those resources for private purposes;

(4) any inappropriate practices or procedures with respect to the management of the Force which have been established either by the Niagara Regional Board of Commissioners of Police or by senior officers of the Force;

(5) the state of existing relations between members of the Force and the Niagara Regional Board of Commissioners of Police;

(6) the reporting relationships between the senior officers of the Force and the Niagara Regional Board of Commissioners of Police and internal reporting relationships within the Force;

(7) the policies, practices and procedures of the Force and the Niagara Regional Board of Commissioners of Police respecting public complaints against members of the Force;

(8) the matters disclosed by the Inquiry into the Drug Raid on the Landmark Hotel in 1974 and the propriety, efficiency and completeness of any other investigations into the activities of the Niagara Regional Police Force by other police forces or police agencies since the creation of the Niagara Regional Police Force and the action taken to correct identified problems and to implement recommendations resulting from such Inquiry and investigations;

(9) the morale of members of the Force;

(10) whether the amalgamation of the police forces which now constitute the Force has resulted in a cohesive police organization that permits orderly and appropriate functioning;

(11) the policies and practices of the Force relating to release of information to the news media, and the state of existing relations between the Force and the news media; and

(12) improprieties or misconduct on the part of members of the Force or any other police agencies arising out of the matters herein enumerated,

AND THAT Government Ministries, Boards, Agencies and Commissions shall assist the Commissioner to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, expert technical advisors, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet in order that a complete and comprehensive report may be prepared and submitted to the Solicitor General.

AND THAT the Ministry of the Attorney General will be responsible for providing administrative support to the Inquiry.

AND THAT Part III of the said Public Inquiries Act be declared to apply to the Inquiry.

AND THAT Order-in-Council numbered O.C. 429/88, dated the 18th day of February, 1988, be revoked.

Recommended Concurred
Solicitor General Chairman

Approved
and Ordered March 25, 1988
Date Lieutenant Governor

APPENDIX B
CHRONOLOGY

In writing this report it has been necessary to deal with many events piecemeal, referring to them in different places from different perspectives according to the subject being addressed in the particular chapter. While this seemed to be the best way to deal with the merits of the various subjects, it may cause some confusion for readers who have not spent the past five years studying the history of this Force. To assist those readers I am setting out below a chronological summary of many of the factual events which contributed to the developments or problems analyzed in the main body of this report.[1]

BACKGROUND

Spring 1969 – Guns registered to Ross were seized by the police and some ended up being registered to Nepon and/or Gayder.

June 1969 – Walsh gave Gayder a number of guns which had been held by the Welland police department.

June 27, 1969 – *The Regional Municipality of Niagara Act* was proclaimed.

January 1, 1970 – The Board of Commissioners of Police for the NRPF came into existence.

January 1, 1971 – The NRPF came into existence. The original Chief of the Force was Albert Shennan; Harris was Deputy of Administration; Gayder was Deputy of Operations.

January 1972 – A Niagara Falls alderman called for an inquiry into the Force due to the alleged use of police cruisers by off-duty detectives.

January 1972 – Then-Deputy Chief Harris was acquitted on nine *Police Act* charges relating to his disciplining of uniform officers.

Early 1970s – Guns seized by the NRPF were stored in the "arsenal" closet near Deputy Gayder's office at 68 Church Street.

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[1] In preparing this chapter I have relied extensively on a lengthy chronology contained in the submissions of Commission counsel, although the facts set out represent my own findings.

May 1972 – Diamonds were seized from Key on suspicion of their being stolen, and were stored in the Force safe.

December 1972 – Lamonte found a handgun in his driveway and turned it in to the NRPF.

May 1973 – Harris and Gayder exchanged roles, so that Harris became responsible for Operations and Gayder for Administration.

July 1973 – The NRPA won a Supreme Court ruling preventing the proposed transfer of certain constables between divisions.

May 11, 1974 – The Force conducted a drug raid on the Landmark Hotel. The methods used by the Force in executing this raid led to a Royal Commission under Judge Pringle, who conducted public hearings and issued his report in January, 1975.

September 4, 1974 – The Force traded a number of seized and found handguns. The Lamonte gun was included in the trade, but appears to have been given by Smith to Gayder, who registered it on September 26, 1974. This was the last handgun registered to Gayder.

January 29, 1976 – The residence of then-Sergeant Ed Lake, an Identification officer, was searched by the RCMP on smuggling allegations.

May 7, 1976 – Judge McTurk sentenced Lake to a loss of eight days' pay in respect of police property found in his basement.

1977-78 – D.B. of the RCMP obtained copies of the gun registrations of then Deputy James Gayder and communicated suspicions about them to members of the NRPF.

1977 – Shennan retired. Harris was appointed Chief. Gayder remained as Deputy Chief responsible for Administration; Walsh became Deputy Chief responsible for Operations.

Early 1978 – Seized guns began to be stored at the secure storage facility at 11 Neilson Street. No guns were moved there from the arsenal closet.

Fall of 1978 – Officer Jim Johnson stored guns, turned in under the "amnesty" gun laws, in the arsenal closet. He observed two or three boxes of weapons there that Gayder told him were being held onto for the purpose of a museum.

1978 – Reginald Ellis was hired as the Force mechanic and was given permission to do work on private vehicles on his lunch hours as one of the terms of his employment.

Approximately 1980 – Gayder put some 26 to 30 of his own handguns in a brown bag and stored them in the arsenal closet.

THE EARLY 1980s

June 1981 – Detective Sergeant Wilhelm of the OPP did a memo to his superiors concerning various pieces of second-hand information that led him to believe there might be problems within the NRPF; much of this information came from VanderMeer and Melinko.

Fall of 1981 – Gayder checked the ownership of a handgun for Mark DeMarco and returned it to him without having DeMarco register it. It later turned out that the gun had been stolen.

May/June 1983 – DeMarco informed McAuliffe of this matter. McAuliffe was a radio broadcaster with the CBC; he did a broadcast about DeMarco's story. Chief Harris then ordered Sergeant Teggin to investigate Gayder concerning this transfer of an unregistered firearm to DeMarco.

July 1983 – Harris announced that he would retire as Chief at the end of the year. He told the Board of Commissioners that Gayder was under investigation and "they might be well advised to wait a little while and see what the outcome of that investigation was." The Board nevertheless appointed Gayder to be the next Chief.

Summer 1983 – Harris instructed Teggin to contact the RCMP and obtain copies of all of Gayder's gun registrations. Teggin received them and then reviewed each one with Harris. After Teggin concluded his investigation, Harris decided that no charges should be laid against Gayder. DeMarco was charged concerning the same incident, although the charges were withdrawn.

August 1983 – G.H., a lawyer with connections to organized crime, alleged to Steven Sherriff, discipline counsel with the Law Society of Upper

Canada, that he had "influence" within the NRPF, particularly with then-Deputy Chief Walsh. G.H. was being investigated by VanderMeer, who added to Sheriff's concerns about this allegation.

Throughout 1983 – There was a series of articles in the *Standard* criticizing the NRPF and alleging a range of misconduct. Also, during this time period, Mel Swart, a local MPP, raised a number of questions in the legislature about the Force, and Gerry McAuliffe, a CBC radio reporter, did a series of broadcasts on alleged improprieties in the Force.

October 13, 1983 – The Solicitor General ordered a joint OPC/OPP investigation into the NRPF. The OPP investigated and cleared certain allegations of assaults on citizens. The OPC investigated all of the other allegations.

October, 1983 – At some point in the OPC investigation the investigators received a copy of Gayder's gun registrations in an anonymous brown envelope. On October 26, 1983, the OPC investigators received a second set of these from Teggin on the instructions of Chief Harris. A comparison of Teggin's originals with the ones provided in the brown envelope to the OPC shows some distinct differences, indicating that there were at least two different sets circulating within the Police Force at the time.

November 7, 1983 – Mel Swart in the provincial legislature raised the topic of Gayder's guns and requested that the OPC in its on-going investigation examine "the vendor permits."

January 1, 1984 – Gayder became Chief of the Force.

March 1984 – Melinko and Onich found four guns in a box given to Melinko by Lake. They marked them with invisible ink and apparently replaced them in Lake's locker.

April, 1984 – The same guns and about 20 more were found by Peter Kelly in Lake's old locker.

May 1984 – The main portion of the OPC report was submitted to the Solicitor General.

June 1984 – D.B. (the former RCMP officer), through an introduction made by DeMarco, approached McAuliffe of the CBC. D.B. gave McAuliffe copies of Gayder's gun registrations. McAuliffe then contacted Teggin in an attempt to do further research on Gayder's guns. Teggin submitted memos reporting on these meetings to Peter Kelly, who in turn forwarded them to Shoveller, who reported on this matter to Gayder.

June 19, 1984 – McAuliffe met with Gayder and Parkhouse to confront them with the material he was gathering for his stories.

July 3 and 5, 1984 – McAuliffe aired two stories about Gayder's gun collection, implying there were some improprieties in the manner it was acquired.

June or July 1984 – The arsenal closet was removed due to building reconstruction. The entire contents of this closet, including the weapons, were moved to the vault in the old magistrate's offices on the top floor of the building.

July 30, 1984 – The Solicitor General made public a 19-page summary of the OPC investigation, keeping the full report confidential. This summary was criticized by the *Standard* as a "whitewash."

August 7, 1984 – Mel Swart, the MPP for Welland/Thorold, wrote Solicitor General George Taylor in strong criticism of the summary version of the OPC report which was made public, and calling for the release of the full report.

August 15, 1984 – An RCMP undercover officer and an informer had an unrecorded conversation with C. during which C. stated "What about frying a cop?" with reference to VanderMeer. This was treated as a potential threat to VanderMeer's safety. Subsequent investigation did not produce conclusive evidence of an intent to threaten VanderMeer, and the investigators (including Shoveller) concluded there was insufficient evidence on which to lay a charge.

September 19, 1984 – C. lodged a citizen's complaint against VanderMeer. Investigation of this complaint was assigned by Walsh to Chambers and other officers, but was suspended until after all the criminal charges against C. were resolved, so that there could be no suggestion of interference. This left the complaint investigation on hold indefinitely.

September 1984 – The OPC submitted part IX of their investigation report to the Solicitor General, finding no improprieties with Gayder's gun collection. The report was not made public.

Fall of 1984 — The arsenal closet contents were moved from the old magistrate's vault with the assistance of Inspector Kopinak. Ten to 15 boxes of guns, museum items, binders and chronological files were moved to a kitchenette storage area off Gayder's secretary's office. Gayder told Kopinak that some of the boxes of weapons were to be reviewed for a museum.

November 1984 — Walsh publicly criticized VanderMeer for alleged preferential treatment in the arrest of a lawyer. Walsh and VanderMeer were not on amicable terms.

December 27, 1984 and January 4, 1985 — VanderMeer and Peressotti held secret meetings with officers of the SEU, OPP and Stephen Sherriff, during which they passed on a range of allegations concerning the Force. As a result of Sandelli's report on these meetings, the OPP assigned officers Joyce and McMaster to investigate these allegations. The investigation, code-named "Project Vino", was conducted as a secret investigation in order to preserve the anonymity of VanderMeer and Peressotti.

January 30, 1985 — Gayder through Sergeant Pay sent a letter to the Solicitor General requesting approval for the NRPF to operate a weapons museum.

January 31, 1985 — Walsh's last day of active duty on the Force. On January 18, 1985, Parkhouse and Shoveller were appointed Deputy Chiefs of Administration and Operations, respectively.

February 5, 1985 — VanderMeer and Peressotti introduced George Onich to the OPP and he became involved in Project Vino. Onich provided them with information on guns, including a concern that Gayder may have been converting seized guns to his personal use. A check of Onich's information by the OPP against Gayder's registered guns provided no substantiation.

February, 1985 — The Vino investigators obtained Wilhelm's 1981 report and requested he go back to his sources and update it. Wilhelm spoke with his sources, including Melinko and VanderMeer, and submitted a February 7, 1985 memo with similar allegations.

February 1985 — Joyce and McMaster were also assigned to investigate an allegation brought forward by McAuliffe of the CBC that the NRPF had illegally wiretapped DeMarco's telephone.

May 18, 1985 – The *Standard* ran an article alleging favouritism to relatives in the hiring of police officers.

Late June 1985 – A new government was formed in the province of Ontario.

July 1985 – Peressotti interviewed a criminal who claimed he had been in jail with C. and had been offered money to kill VanderMeer. Peressotti had a new investigation of this alleged death threat assigned to his partner Arcaro. Arcaro cleared the allegation as unfounded, after consultation with Crown Attorney Root.

July 1985 – Peter Moon of the *Globe and Mail* and VanderMeer met for the first time. VanderMeer told Moon about some of his concerns regarding the NRPF, including Gayder's gun collection and a poker game at Schenck farm. At VanderMeer's request Moon obtained copies of Gayder's gun registrations from McAuliffe and gave them to VanderMeer.

August 12, 1985 – VanderMeer, Peressotti, Onich, Arcaro and Sheriff met with Joyce. Joyce informed them that the OPP Project Vino investigation was likely to be brought to a close in the near future. VanderMeer "indicated that would not be the end of it."

September 30 to October 2, 1985 – McAuliffe aired six stories about the DeMarco wiretap complaint, strongly suggesting that the NRPF had been engaging in illegal wiretaps and calling for a public inquiry. Mel Swart raised the matter in the legislature and asked the Solicitor General for a public inquiry. McAuliffe quoted Bob Rae as saying that he would be pushing Premier Peterson for an inquiry.

October 7, 1985 – Denise Taylor wrote to her local MPP and expressed an interest in being appointed to the Board of Commissioners of Police.

October 8, 1985 – Bob Rae sent David Peterson a note suggesting that a public inquiry be called into the NRPF due to the McAuliffe stories about alleged illegal wiretaps.

October 18, 1985 – Moon published two articles in the *Globe and Mail* about the VanderMeer/C./G.H. situation, including extensive quotes from Sheriff (to whom Moon had been directed by VanderMeer).

THE EVENTS OF 1986

January 1986 – Three new members of the Board were appointed by the new provincial government: Hanrahan, Keighan and Taylor. Dickson and Saracino were the regional representatives. Dickson was elected chairman and Taylor vice-chairman.

January 20, 1986 – Onich requested a meeting with Joyce and informed him that VanderMeer was not happy that the OPP were unlikely to lay charges, and that VanderMeer intended to embark on "Plan C". Joyce recorded in his notes: "Onich does not know for sure what Plan C is, but suspects it may be a move to get an public inquiry into the Niagara Regional Police."

Spring 1986 – The OPP concluded their various investigations of the NRPF. Their reports did not come out until much later in the year.

March 10, 1986 – Gayder met with Shoveller and Gittings about the use of police cars by Inspectors. His notes record: "Not to be taken home but used only between station and station."

Spring 1986 – Mrs. Taylor spoke with a number of members of the community about the Force. In March or April she spoke with lawyer William Reed, who told her about a problem with "cliques" in the Force – the Harris clique, which he identified as including Shoveller, Moody, Williams and Leigh, and the Gayder clique, which he identified as including Parkhouse, Gittings and Swanwick.

Spring 1986 – Mrs. Taylor was spoken to by Chief Gayder in regard to a meeting she had had with an officer (Jacklyn Davey). He advised her she was not to meet with officers without his prior approval.

May 5, 1986 – Gayder met with Moody and Parkhouse about the Force being under strength between hiring periods. He recorded in his notes: "Hiring of 3 officers for 26th May from old list – next 3 in line – ... – OK." This was approved by the Board.

Spring of 1986 – The storage area of Mrs. Parnell (Gayder's secretary) received new shelving. When this occurred the contents of the area were moved by John Rhodes to closet 374. The items moved included boxes of weapons. Mrs. Hockey, another secretary, was present for the move.

Spring or summer of 1986 – Carol Berry, the sister of John Rhodes, told VanderMeer about the guns that her brother had moved.

Late spring or early summer 1986 – Sergeant Jim Baskerville gave Mrs. Taylor a tour of the Court facility. Thereafter, they continued to have "quite a few" meetings throughout 1986.

May, 1986 – An inspector was charged with discreditable conduct under the *Police Act*. He took early retirement. The matter received considerable press attention.

About June, 1986 – Mrs. Taylor received copies of Gayder's gun registration slips from Mal Woodhouse.

June 1986 – Another controversy about the Force was aired in the press. It was alleged that Force officers were giving unfair advantage to certain towing operators when calling tow trucks to police situations.

June 10, 1986 – St. Catharines coroner David Lorenzen testified that some officers in the NRPF were selling guns seized in suicide investigations for personal profit. The local media gave prominence to this allegation. The *Standard* ran at least three articles on the subject. The Force Complaints Unit tried to investigate this allegation, but had nothing to go on because Lorenzen refused to be interviewed by them, resulting in the investigation being discontinued.

June 13, 1986 – Gayder met with Mrs. Taylor and alleged that she was causing morale problems by meeting officers without his permission and embarrassing him by calling other police departments to check what he was telling her.

July 10, 1986 – Mrs. Taylor asked Gayder if the investigation into the Lorenzen matter could be reopened. Gayder indicated he would check with the Crown and report to the Board. The next day Mrs. Taylor was interviewed on CBC radio and indicated she was asking the investigation be reopened.

July 14, 1986 – Mrs. Taylor inquired of Gayder concerning the OPC report. During this meeting Gayder records that he "also told her of morale of Force and Board because of her talking to the press." Gayder gave her a copy of the OPC report.

August 6, 1986 — The *Standard* published an article by Michael Clarkson alleging rampant nepotism in the NRPF, claiming 27 per cent of Force members were related. At this time the Force was in the middle of its semi-annual hiring process. Five hundred and fifty applicants had undergone testing in April and May, 1986. The top 38 were scheduled to be interviewed by a selection board in the week of August 18 to 25. Among these was Gayder's son John. The Board arranged to have the interviews observed by Hanrahan, who later told the Board that the interviews "were conducted fairly and honestly and that there was no nepotism whatsoever."

August 7, 1986 — Local alderman Mal Woodhouse, who was not then a member of the Board, presented a notice of motion to regional council calling for a public inquiry into the NRPF. The incidents cited by the press in support of this call were the McAuliffe wiretap allegations, the *Standard's* nepotism allegations, the suspended Inspector matter, the towing controversy and the "Lorenzen" gun allegations.

August 29, 1986 — Woodhouse circulated a package of materials in support of his motion for an inquiry. Mrs. Taylor supplied Woodhouse with a copy of the summary of the 1984 OPC investigation, which went into this package. Among other material in the package were the Moon articles about VanderMeer, C. and G.H. The motion was defeated by regional council.

Summer 1986 — Mrs. Taylor initiated a proposal with Gladys Huffman and Wilbur Dick to go to the Solicitor General about the Force. When Woodhouse's motion for an inquiry failed, they "put that on hold."

Late August, 1986 — The NRPA made an official complaint concerning Mrs. Taylor meeting with police officers without going through the Chief's office. Gayder went to the chairman of the board (Dickson). Dickson spoke with Mrs. Taylor and contacted the OPC and asked them to send a representative over to the next Board meeting to outline the duties and responsibilities of police commissioners.

September 11, 1986 — The next Board meeting took place, including the following events:

- After the July CBC broadcast about the "Lorenzen" allegations, Gayder had had Staff Sergeant Nicholls audit all homicide and suicide guns coming into the Force's possession from January 1, 1983 to June 30, 1986. Nicholls did such an audit and found all such guns fully accounted for. His report was submitted to the Board on September 11, 1986.

- Gayder had also had the Personnel Unit conduct their own analysis of family relationships on the Force in consequence of the *Standard's* August nepotism article. This report, which showed different statistics than those claimed by the *Standard*, was also provided to the Board on September 11. The Board decided to create a "Monitoring Committee" to review the operation of the Force's hiring procedures.

- At this same meeting the Board made its hiring decisions based on the latest Selection Board's report. Gayder's son, John, was ranked as an acceptable alternate, but was not hired at that time.

- John McBeth and Stan Raike of the OPC attended in response to Dickson's request. During a question and answer portion of this meeting, McBeth made some comment about Board members who did not comply with the guidelines perhaps not being reappointed. Mrs. Taylor, whose conduct was at least impliedly being criticized, took this personally.

Early fall 1986 — Mrs. Taylor began having periodic discussions with Deputy Shoveller.

Early September, 1986 — Mrs. Taylor met Baskerville, and she perceived that he "told her everything" about a number of specific allegations of wrongdoing in the Force. Gayder, guns and DeMarco were among the allegations mentioned.

September 17, 1986 to mid-October — A sensitive investigation regarding "Officer X" was conducted. VanderMeer was actively involved. Deputy Kelly's notes from the time record, "Never in all my years in CIB have I seen a case cause such hard feelings in an office before."

September 29 and October 2, 1986 — Mrs. Taylor accompanied P.C. Gill during his shifts in a cruiser. From their conversations Mrs. Taylor gained the impression that she was being warned she was in danger.

October 1, 1986 — Deputies Shoveller and Parkhouse traded positions so that Shoveller became responsible for Administration and Parkhouse for Operations.

October 14, 1986 – Mrs. Taylor approached William Reed (a lawyer who had given her general background about the Force in the spring) about her increasing concerns. Reed arranged for her to meet VanderMeer on Friday October 17. Mrs. Taylor related to him the allegations she was receiving about the Force and about her own safety. Mrs. Taylor was looking for someone to investigate these allegations.

October 19, 1986 – Mrs. Taylor met VanderMeer again, this time at her home. VanderMeer showed particular interest in the gun allegations. George Onich joined them and indicated he had personal knowledge of at least one gun having gone astray. By the end of the meeting Mrs. Taylor had the impression VanderMeer was going to investigate her information.

Balance of 1986 – Mrs. Taylor and VanderMeer continued to meet at her home and "share information," perhaps on a bi-weekly basis. VanderMeer gave her information about investigations he had been involved in; she shared with him information that she was receiving from other officers and from people in the community.

Sometime in October, 1986 – VanderMeer, accompanied by Onich, approached Peter Kelly concerning the possible existence of a closet containing seized guns in the Chief's area of the building. VanderMeer expressed the belief that they may be stolen from the department, and asked about approaching a Justice of the Peace.

October 22, 1986 – Mrs. Taylor met McAuliffe in Toronto. Their discussions included Gayder and guns, the merits of Shoveller, Teggin's investigation of Gayder, the McBeth incident and the OPP wiretap investigation.

October 22, 1986 – A complaint was received from Mrs. Ellis, the estranged wife of Reg Ellis, the Force mechanic. Mrs. Ellis spoke with Mrs. Parnell and threatened that if her complaints about her ex-husband were not handled to her satisfaction she would go to the media with the names or licence numbers of officers who were getting their cars fixed by Ellis at the Force garage. Mrs. Parnell relayed this complaint and threat to Chief Gayder at his morning meeting with Deputies Parkhouse and Shoveller, and the matter was discussed by them. Gayder assigned the matter to the Complaints Unit to be investigated.

October 30, 1986 – Shoveller received a report from Locke about private repairs being conducted at the Force garage. Shoveller also spoke with

Locke about a paint job Parnell (Gayder's secretary) had received to her car. About a week to 10 days later Locke told Shoveller that he had spoken with Ellis, who had explained the transaction and obtained a copy of the invoice. Shoveller asked for the invoice and Locke had it hand-delivered to him.

Late October, 1986 – Mrs. Taylor met with Jim Bradley (MPP) and told him she didn't know where to turn because she was getting serious allegations about the Force. Bradley agreed to attempt to set up a meeting for her with the Solicitor General.

Late October or early November, 1986 – Mrs. Taylor's husband (a doctor) convinced her to see one of his patients. By coincidence this patient was Pinnochio, Baskerville's prime informant. Mrs. Taylor met him in the hospital and listened to his allegations.

Late October or early November, 1986 – VanderMeer discussed with Mrs. Taylor a concern about inspectors being given police cruisers for personal use.

November 2, 1986 – Mrs. Taylor met with John Crossingham, a neighbour who was a lawyer. She discussed with him a number of her concerns about Gayder. She was prepared to confront Gayder in public, with or without the support of the other Board members. Her notes state: – "support or NO – does it really matter – the media will be there." Mrs. Taylor also discussed these issues with VanderMeer that day.

November 6, 1986 – At a Board meeting Mrs. Taylor challenged Gayder about the use by inspectors of police cruisers; Gayder complained about Mrs. Taylor going behind his back to gather information about Force typewriters.

November 7, 1986 – St. Catharines CIB Inspector Peter Kelly was transferred to Niagara Falls as part of a routine transfer of 14 different officers. VanderMeer and others passed on to Kelly a rumour that this transfer was caused by Mrs. Parnell, who was allegedly upset about the "Officer X" investigation. There is no substantiation to this rumour.

November, 1986 – Kelly's replacement in charge of St. Catharines CIB was Bruce Chambers. VanderMeer, who had had an ongoing dispute with Chambers for some years, was unhappy about this and submitted a memorandum asking for a transfer. The memo was severely critical of Chambers;

VanderMeer circulated it within the unit. VanderMeer was persuaded by Superintendent Leigh to withdraw his request; subsequently all copies of this memo disappeared.

November 16, 1986 – Mrs. Taylor made a note about her concern that her phone was being tapped: " – phones – tapped? – last month – clicking noises on the line – my phone and Mel's – strange reaction." She testified that "Mel" was Mal Woodhouse.

Approximately mid-November, 1986 – Pinnochio had told Mrs. Taylor that he intended to go to the media and expose all his information. Mrs. Taylor set up a second meeting in the hospital with Pinnochio, herself and Michael Clarkson from the *Standard*.

Approximately late November, 1986 – Mrs. Taylor met again with Pinnochio, this time with VanderMeer. VanderMeer suggested having Pinnochio meet Peter Moon.

December 4, 1986 – The OPP wiretap report was provided to the Chief and the Board. The OPP reported that the NRPF had not illegally tapped DeMarco's telephone and that the documents on which this allegation was based were forgeries. A more general allegation of widespread illegal wiretaps was also rejected – the NRPF had obtained 37 DNRs without a search warrant, which was legal at the time. The report was not made public, but a five-page press release was issued by the Solicitor General summarizing the findings, and the Board issued a press release agreeing with it.

December 4, 1986 – Gayder requested the Board to do its periodic audit of the Special Account. This was a confidential Force account maintained by Gayder and used principally for informers' fees. The money in the account came largely from the auctioning of unclaimed property, such as stolen bicycles. The Board passed an "Order" at its meeting that day that the audit be conducted by Mr. Dickson and Mrs. Taylor on December 11. Mrs. Taylor later cancelled this appointment and did not reschedule it.

Early December, 1986 – At the Force Christmas party VanderMeer introduced Mrs. Taylor to Stephen Sherriff. There was some general discussion about allegations or concerns relating to the Force. They agreed to meet to discuss these matters.

Early December, 1986 – Shoveller spoke with VanderMeer about private repairs at 11 Neilson Street and asked him to investigate.

Mid-December, 1986 – There was a second meeting of VanderMeer, Pinnochio and Mrs. Taylor.

December 22, 1986 – The Monitoring Committee met for the fifth time. This was the first Monitoring Committee meeting that Gayder had attended. At this time a new selection process was well advanced and interviews were about to take place. The question of what should happen to "alternates" from the previous hiring board in the current selection process was raised at this meeting. The discussion became "heated" because Gayder's son was one of the alternates in question; he left the room for much of the debate. A compromise was eventually reached whereby the previous alternates would not have to be retested; their test marks would stand and they would be interviewed if they met the new cutoff mark. Gayder was out of the room for the discussion of cutoff marks and misunderstood this compromise to mean that all previous alternates should be re-interviewed.

December 23, 1986 – Gayder appointed Parkhouse, a long time friend of his family, to be the chairman of the next selection board, and directed him to include all the previous alternates for interviews.

December 23, 1986 to January 4, 1987 inclusive – Shoveller went on holidays.

December 24, 1986 – An incident occurred on a bus between Pinnochio and D.R. Pinnochio was of the view that his life had been threatened. He called the police. He then telephoned Mrs. Taylor and complained that the police had not responded properly to his call. Mrs. Taylor called Staff Sergeant Hill, the senior officer on duty, and left him with the impression that she wanted the matter investigated forthwith. Mrs. Taylor "was in contact with Sergeant VanderMeer frequently" during the Christmas holiday season over this incident, and also discussed it on more than one occasion with Moody.

EARLY 1987

January 5, 1987 – Shoveller returned from vacation and raised a concern that two of the previous alternates who were scheduled to be re-interviewed had not made the cutoff mark. Gayder did not agree with Shoveller's understanding of what had happened at the Monitoring committee. Various phone calls could not resolve the issue. There was no suggestion that the process should be stopped.

January 7, 1987 – Shoveller met with VanderMeer concerning his investigation of Mrs. Parnell. They discussed the possibility that her paint job might have been paid for out of Force resources. VanderMeer's notes show Shoveller expressing the opinion that the paint job must have been authorized by Gayder – "if criminal wants charges laid."

Early January, 1987 – The meetings which Mrs. Taylor was having with Shoveller started to increase. She was also having more conversations with VanderMeer and examining her position under the *Police Act*.

January 8, 1987 – Mrs. Taylor was elected chairman of the Board of Commissioners of Police.

January 8, 1987 – That evening VanderMeer took Mrs. Taylor to meet with Stephen Sherriff. VanderMeer testified that he set up this meeting because Mrs. Taylor had read the Moon article, expressed interest and, "I told her that if she wanted to hear about it she could hear it from the horse's mouth." The main discussion was about Sheriff's concerns on the subject of G.H., C., Walsh and the Vino investigation. There was also some discussion as to whether what Mrs. Taylor viewed as Gayder's attempts to have his son hired was "corrupt practice." Mrs. Taylor's notes of the discussion suggest that she was looking for other incidents of impropriety involving Gayder – and that she would speak to Shoveller in that regard. The notes conclude as follows: " – FEEL STYMIED – need help – 'I turned to media as never before...'."

January 9, 1987 – Shoveller and VanderMeer met again concerning 11 Neilson Street and Mrs. Parnell. At this time Shoveller provided VanderMeer with a copy of the invoice from the garage for this work. The suspicion of a possible fraud was still present. VanderMeer learned for the first time about the Special Account, which was discussed as a possible source of the funds. The account number and bank information for this account are recorded on an undated page at the back of his January, 1987 duty book, along with Mrs. Parnell's address.

January 10, 1987 – VanderMeer sent Shoveller a memo entitled "Possible Misuse of N.R.P.F. Funds" concerning his investigation of the Parnell paint job.

January 5-13, 1987 – The hiring panel of Parkhouse, Gittings and Moody interviewed candidates. Mrs. Taylor observed.

Early January, 1987 – Shortly after Mrs. Taylor was appointed chairman, VanderMeer arranged for Mrs. Taylor to meet Peter Moon. Mrs. Taylor expressed the concern that Gayder might be a criminal, particularly with respect to guns. Moon testified: "And she didn't want him to be Chief of Police. Specifically why, at this stage, I can't recall, but I have a strong recollection that she didn't want Chief Gayder there, and she didn't feel that he was an appropriate Chief because of his involvement with weapons and that he wasn't necessarily the administrator that she wanted in charge of the force."

January 13, 1987 – Gayder received a telephone call from the Royal Bank concerning VanderMeer's "strictly secret" investigation of Parnell. Gayder knew nothing about this and, instead of going through the chain of command, he spoke directly with Parnell to find out what she knew.

January 15, 1987 – The Board met and considered the recommendations of the first January Selection Board. There was considerable confusion as to what had been discussed at the Monitoring Committee meeting of December 22, how the candidates were supposed to have been selected for interviews, and whether anything had even been decided at that meeting. Bob Hanrahan was absent, and these questions were deferred until he could be present.

January 15, 1987 – Later that day Mrs. Taylor met Ken Keyes, then the Solicitor General. She spoke with him about the information she had been receiving and her thoughts on how to act, ranging from discussions with Shoveller about developing *Police Act* charges to why she felt she could not go to the Board because, "I concluded that they could not be trusted with this information at this point," nor could she go to the Chief because "he had lied to me."

January 16, 1987 – At the morning meeting Gayder asked Shoveller and Parkhouse if they had any knowledge of VanderMeer's "secret" internal investigation of Mrs. Parnell. Both denied it. At that same meeting Gayder, Shoveller and Parkhouse discussed the problems between VanderMeer and Chambers. On Parkhouse's recommendation they decided to transfer VanderMeer to a different location.

January 20, 1987 – Gayder on behalf of Mrs. Parnell filed a formal complaint against VanderMeer concerning his inquiries on her bank account. Gayder ordered Marriott and McGloin to investigate what VanderMeer's "secret" investigation was about. They interviewed VanderMeer and he told them Shoveller was involved.

January 20, 1987 – There was a full Board meeting to consider the hiring issues raised on the 15th. There was further discussion and confusion as to what had happened on December 22. The Board eventually decided to hold a second January selection process.

January 21, 1987 – Mrs. Taylor made notes of things to discuss with VanderMeer, including *Police Act* charges against Gayder. VanderMeer advised her to seek legal counsel and have Gayder charged.

January 21, 1987 – Shoveller was interviewed by Marriott and McGloin concerning the VanderMeer investigation of Parnell. The interview shows a distinct problem between Shoveller and Gayder.

January 23, 1987 – Gayder delivered to Shoveller a memo requesting a report on the VanderMeer investigation of Parnell.

January 26, 1987 – Gayder spoke with Mrs. Taylor about the meetings she was having with Shoveller. He then spoke with Shoveller, who refused to discontinue the meetings unless he was directly ordered not to speak with her.

Late January, 1987 – Moon met Mrs. Taylor, VanderMeer and Pinnochio at the Holiday Inn. Pinnochio recounted various vague allegations against the NRPF. Both Moon and VanderMeer were not impressed with Pinnochio.

January 26-27, 1987 – The second Selection Board of Moody, Gittings and Swanwick sat, with Mrs. Taylor as an observer. By memorandum dated January 27, they recommended hiring the same five candidates as previously, including Gayder's son.

January 27, 1987 – Mrs. Taylor spoke with John Crossingham about possible charges against Gayder. Her notes include reference to "what did Waterloo do wrong", showing a clear intention to get rid of Gayder.

January 27, 1987 – Joe Newburgh met with Shoveller and informed him of his suspicions that his telephone had been tapped. Shoveller asked him to report this to Mrs. Taylor, and arranged for them to meet.

January 28, 1987 – There was a Board meeting to discuss the recommendations of the second hiring panel. The meeting became heated. The first time Gayder is recorded as trying to speak to the point, Mrs. Taylor told him to "shut up." The Board rejected the Selection Board's recommendations and hired no one.

January 28, 1987 – Gayder then tried to see Mrs. Taylor on an urgent basis. She told him she was "tied up" and "couldn't meet today." Instead she met with Joe Newburgh and discussed his wiretapping suspicions.

January 28, 1987 – That afternoon Ted Johnson expressed concern to Gayder about Mrs. Taylor's communications with officers, especially the Staff Sergeant Hill incident the previous Christmas. Gayder asked for an investigation.

January 28, 1987 – That same day Hanrahan asked Wilcox to prepare a "Draft Unofficial Minutes (Addendum)" relating to the December 22 Monitoring Committee meeting. This was the first draft of any document that made reference to the discussion of the alternates at that meeting. It showed that there had been no motions to come out of the meeting.

January 29, 1987 – Mrs. Taylor met Gayder in the morning. They had further disagreements, and Gayder requested a special Board meeting to "clear the air."

January 29, 1987 – Later that day Gayder telephoned Raike at the OPC concerning his problems with Mrs. Taylor. A meeting was set up for the following week. Mrs. Taylor was also making phone calls – looking for a lawyer to assist her in charging Gayder. That evening she called VanderMeer, told him the hiring matter was coming to a head and invited VanderMeer to a meeting the next day.

January 30, 1987 – In the morning Shoveller met with Mrs. Taylor and VanderMeer in Mrs. Taylor's home. During the course of this meeting Mrs. Taylor informed Shoveller that she was considering laying *Police Act* charges against Gayder relating to the recent hiring events.

January 30, 1987 – Later that day Gayder received a memo from Shoveller concerning the VanderMeer investigation of Parnell. The memo was less than respectful.

January 31, 1987 – Mrs. Taylor met with lawyers concerning hiring charges against Gayder. Mrs. Taylor mentioned concerns about Gayder that included weapons and the special fund.

February 1, 1987 – In the morning Mrs. Taylor and VanderMeer met with Jim Bradley, the local MPP. Mrs. Taylor informed Bradley that she had decided to charge Gayder.

February 1, 1987 – That afternoon VanderMeer met Hanrahan at a social function and told him that Mrs. Taylor intended to charge Gayder. Hanrahan was surprised and felt that "this was out of the blue to me."

February 3, 1987 – Gayder met with Schultz of the OPC concerning his problems with Mrs. Taylor, the hiring situation and the Shoveller-VanderMeer investigation. The possibility of a hearing concerning Mrs. Taylor's actions was discussed. The following day Schultz telephoned Gayder and asked him to inform the Board that he would be coming to see them by the end of March.

February 2, 3 and 4, 1987 – Mrs. Taylor prepared for laying charges against Gayder at the coming meeting. The charges were typed up in advance of the meeting. She did not inform other Board members of what she was planning nor consult them for advice on the charges. Dickson was absent on holidays, but she did not consider delaying the matter until his return.

February 4, 1987 – A "Draft Unofficial Minutes (Addendum)" for the December 22 Monitoring Committee meeting was circulated by Hanrahan.

February 5, 1987 – The Board met and Gayder presented his position about the hiring situation. The Board did not question him, but withdrew and met in private with Dunlop, the lawyer Mrs. Taylor had brought. Mrs. Taylor informed the Board that she was going to charge Gayder. Dunlop advised the Board that if Gayder was charged he should be suspended. The other Board members were taken by surprise, but agreed to suspend Gayder given the fait accompli of the charges. The charges all related to what had allegedly taken place at the December 22 Monitoring Committee meeting (a subject which the Board itself had been unable to agree on ever since).

Gayder was summarily suspended and removed from the building. Shoveller was appointed Acting Chief. Mrs. Taylor had prepared a press release in advance and immediately issued it.

THE EVENTS OF FEBRUARY TO OCTOBER, 1987 – THE IIT

February 6, 1987 – Mrs. Taylor made notes about placing VanderMeer's recent transfer on the agenda for the next Board meeting, and on February 7 the *Standard* published an article entitled "Taylor To Probe Supercop Transfer." Mrs. Taylor is quoted at length as wanting to question the transfer.

February 6-9, 1987 – Mrs. Taylor also made notes about who Shoveller should assign to the internal investigation which was being contemplated: "A/CHIEF – must assign officers to – must be people he can trust and the Commission can trust."

February 9, 1987 – Taylor, Shoveller, Keighan and Saracino met with Keyes (Solicitor General), Takach (Deputy Solicitor General) and McBeth (OPC). They discussed the charges against Gayder and the possibility of politicians calling for a public inquiry. Shoveller wanted to conduct an internal investigation, and made the commitment that if Mrs. Taylor were to provide the information that she had, as well as the sources of that information, that those matters would be fully investigated, and should there be evidence of criminal wrongdoing, that evidence would be placed before a Crown counsel prior to charges being preferred.

February 10, 1987 – The minutes of the Monitoring Committee meeting (concerning which Gayder had been charged) were revised.

February 12, 1987 – Shoveller asked Moody to head up the internal investigation which was being proposed.

February 12, 1987 – The first full Board meeting since the suspension of Gayder took place. Earlier minutes on subjects relevant to Gayder were edited. The Board discussed three separate items about VanderMeer at this meeting. At Shoveller's request, they ordered that the "Special Account" be audited. They contacted a forensic accountant for this job.

February 15 or 16, 1987 – Mrs. Taylor made a note about things to do. One item was: "MOODY – get moving on team."

February 18, 1987 – The Internal Investigation Team (IIT) commenced. VanderMeer was appointed to the team at Shoveller's request, who in turn had made this request in part because of VanderMeer's relationship with Mrs. Taylor. Joe Newburgh was appointed by Moody. Moody's secretary Billie Hockey was also ex-officio part of the team.

February 18, 1987 – That afternoon Newburgh and VanderMeer met with Shoveller, Mrs. Taylor and Bill Dunlop (the Board's lawyer on the Gayder charges). Newburgh re-drafted the charges against Gayder. The Special Account was also discussed.

February 18, 1987 – That evening VanderMeer took Newburgh to meet Sherriff at his home. They discussed Sherriff's allegations about G.H. and Walsh, which Newburgh did not credit.

February 19, 1987 – In the morning VanderMeer and Newburgh received information about the Special Account and the moving of guns into a closet near the chief's office. Later they met with Don Holmes, the forensic accountant, about the Special Account. Later that day Holmes was retained by the Board to do an "investigation" of the Special Account.

February 19, 1987 – In the afternoon there was a meeting of Shoveller, Moody, VanderMeer and Newburgh. VanderMeer raised the topic of the chief's closet and the suspicion that there were a lot of guns in it. Shoveller knew he could get a key and open the closet, but did not want to do so at that time.

February 20, 1987 – VanderMeer and Newburgh met Mrs. Taylor and officially received her allegations for investigation. Later they received information from Baskerville.

February 21, 1987 – VanderMeer received from Mrs. Taylor copies of Gayder's gun permits.

February 23, 1987 – Moody, Newburgh and VanderMeer developed a list of priorities for their investigation: complaint statistics; special fund; supply irregularities; firearms.

February 23, 1987 — That same Monday afternoon Moody slipped the lock of closet 374. Shoveller told him to lock it up again, which he did. Shoveller had Turnbull already doing an audit of Gayder's personal property, and instructed him to include the closet in his audit.

February 24, 1987 — Closet 374 was "officially" opened by Turnbull in the course of his audit. Soon after VanderMeer and Newburgh interviewed Sergeant Pay about the weapons and their possible use in a museum.

February 24, 1987 — Dunlop, the Board's lawyer, spoke on the telephone with Gayder's lawyer. Dunlop stated there was an on-going investigation into a host of things about Gayder, including allegations of Gayder interfering with VanderMeer's "authorized investigation which concerned funds from the sale of unclaimed bicycles" [the Special Account]. Dunlop further stated "that there is no way that the Board would continue to have Gayder carry on as the Chief of Police and that even if the Board was unsuccessful in its charges against Gayder, it would not permit him to return to active duty." The Syd Brown case in Waterloo was referred to.

February 25, 1987 — The NRPA distributed a notice to all of its members, providing advice in the event they were interviewed by members of the IIT. The Senior Officers Association also circulated this notice to its members.

February 25, 1987 — Mrs. Taylor recorded in a letter later that year that VanderMeer had told her that by this date he had reasonable and probable grounds to believe Gayder had committed criminal offences.

February 26, 1987 — P.C. George Onich was assigned as an identification officer with the IIT.

February 27, 1987 — VanderMeer was given instructions to work the weekend if required to put together two or three charges regarding property seized.

February 28/March 1, 1987 — VanderMeer worked over the weekend in preparation of a *Police Act* charge brief against Chief Gayder. One of the witnesses interviewed that weekend was Inspector Stevens, who testified that VanderMeer appeared to have already made his mind up that Gayder was guilty by that time.

March 3, 1987 — There was a meeting of the IIT, Shoveller, Moody, Dunlop, and Mrs. Taylor regarding the nine charges proposed in the new

Police Act brief. Dunlop telephoned Gayder's lawyer and informed him of these further charges.

March 4, 1987 — Gayder took early retirement.

March 5, 1987 — In the morning Moody, Newburgh and VanderMeer met. "Next target should be Supply & Automobile repairs and purchases."

March 6, 1987 — Mrs. Taylor, Shoveller and Moody brought local MPP Mel Swart into room 230 to view the weapons which had been seized from closet 374. Later the same day Moon of the *Globe and Mail* attended room 230 at VanderMeer's invitation and viewed the guns. Moon did an article which appeared in the *Globe and Mail* on March 9.

March 6, 1987 — The *Spectator* wrote to Shoveller, forwarding copies of Gayder's gun registrations. The *Spectator* had received these anonymously in the mail. The letter states in part "Denise Taylor urged the *Spectator* to forward these to you in connection with an ongoing internal police investigation."

March 8, 1987 — The Board issued a press release about the IIT, highlighting the finding of the weapons and suggesting a link between Gayder and the guns. This was followed by a series of articles in different newspapers, under headlines such as "Secret arsenal seized," "Niagara police probe uncovers weapons cache at headquarters" and "WEAPONS SEIZED FROM COPS Major internal police investigation is on."

March 16, 1987 — Constable Lee Rattray was assigned to the IIT.

March 16, 1987 — Shoveller received from McMaster of the OPP the OPP Operation Vino report. The report found wrongdoing only relating to Typer providing an address based on an unlisted number to C. [*Police Act* charges were later laid on this, but withdrawn due to lack of evidence.] While many other allegations were discussed in the report, none was found to be substantiated.

March 16, 1987 — VanderMeer, Newburgh, Shoveller and Moody met and again discussed priorities. Shoveller placed the "theft" of guns from Welland, and the investigation into Neilson Street, as priorities.

March 17, 1987 – The OPP "Operation Vino" report was provided to the IIT for any follow-up they considered necessary as part of their investigation.

March 26, 1987 – Newburgh and Rattray travelled to Brampton to speak with OPP Inspector Wilhelm regarding the Vino report. They formed the view that it was not worth pursuing.

April 16, 1987 – The report of Holmes concerning the Special Account was presented to the Board. Holmes found no improprieties in the disbursements from the account, although he recommended a change in the guidelines for same; thereafter the IIT did no further investigation on this subject.

April 23, 1987 – Shoveller met with the IIT. He instructed that weapons and supply were to be their primary goals, with any discovered crime being investigated simultaneously.

April 25, 1987 – VanderMeer and Rattray interviewed Reg Ellis, the Force mechanic. Ellis provided information in connection with a number of instances of private use of the Force garage, including the installation of tires on Mrs. Parnell's car.

April 26, 1987 – VanderMeer obtained a search warrant and, accompanied by Newburgh and Rattray, seized the tires from Mrs. Parnell's car.

April 27, 1987 – Sergeant Gerry Melinko was unofficially assigned to the IIT.

April 28, 1987 – Newburgh submitted a report to Moody indicating a belief that *Criminal Code* offences at Neilson Street had been uncovered by the investigation.

April 15 and 22, May 6, 3, 20 and 27 and June 3, 1987 – Various members of the IIT attended at the Schenck farm in order to get the licence numbers of the people Gayder was playing poker with. The main purpose of this surveillance was to establish who was associating with Gayder. The trips ended on June 3 when Parkhouse telephoned the Station from the card game, and asked for a report. Schenck filed a citizen's complaint, which was dismissed as exonerated when VanderMeer submitted a memorandum saying that Rattray was "conducting a criminal investigation."

May 5, 1987 – A meeting of Brady (counsel for the Niagara Region Police Association), Ted Johnson, and Shoveller. Shoveller was informed that Brady and Johnson were intending to meet with the Attorney General to express their concerns about the internal investigation, specifically, the make-up of the IIT and the question of whether the chairman (Mrs. Taylor) had been giving directions to members of the Force. Shoveller indicated his willingness to go with them to the Attorney General, but later changed his mind.

May 15, 1987 – Brady attended with Johnson and Peter Ruch (president of the Association) at the Ministry of the Attorney General, where they met with Hunt, Martin, Wolski, Root and Houlihan. They expressed concern over the way the internal investigation was proceeding. The Association's view was that there should be an investigation, but that it would be best if another Force took it over, in order to conduct it without political animosities prejudicing the investigation.

May 25, 1987 – Moody and Shoveller met with the same members of the Attorney General's Ministry. During the discussion Hunt questioned whether the IIT was a "witch-hunt" and whether it was motivated by geographic fac-tionalism within the Force. Houlihan (a Crown attorney for the Niagara Region) raised the suggestion that Shoveller was involved with Andrew Bell, VanderMeer and Mrs. Taylor in a conspiracy to remove Gayder from office. Shoveller denied these allegations, and was quite upset about them.

May 29, 1987 – Shoveller was quoted in the *Globe and Mail* as follows: "Asked whether the Force has enough evidence to lay criminal charges, Mr. Shoveller said: 'If we didn't think so we wouldn't feel the need to prepare briefs for the Ministry.'"

May 29, 1987 – The NRPA issued a press release expressing grave concerns about the propriety of the internal investigation and suggesting an independent body take control of the NRPF, and conduct an investigation.

June 1, 1987 – VanderMeer and Newburgh travelled to Ottawa and Peterborough to interview Robert and Richard Smith, and John Wolff concerning the NRPF's gun trades with Albion Arms. On June 3, they met with RCMP Staff Sergeant Ron Knowles in Ottawa, regarding the gun registration system.

June 9, 1987 – Newburgh and VanderMeer had a dispute regarding the preparation of the briefs. VanderMeer submitted his resignation because of it. He also telephoned Mrs. Taylor about it. The dispute was ultimately resolved by Chief Shoveller in favour of VanderMeer, whose version remained in the brief.

June 16, 1987 – Meeting with Hunt, Martin, VanderMeer, Newburgh, Moody and Shoveller, at which time the first four volumes of the IIT briefs concerning Gayder were personally delivered to the Attorney General's office.

June 16 – Newburgh's last working day. He took sick leave from then until his retirement.

June 22, 1987 – Vol. 5 of the Gayder briefs was approved by Moody and delivered to the Attorney General's Ministry by courier.

July 6, 1987 – Melinko was officially assigned to the IIT.

July 14, 1987 – Wolski (a lawyer with the Attorney General's office) attended the NRPF headquarters and discussed the case with VanderMeer.

July 23, 1987 – Wolski telephoned VanderMeer about the investigation.

July 29, 1987 – VanderMeer worked on an evidence brief regarding Reginald Ellis. At 2:30 p.m. his notes record: "Meeting with J. Shoveller re Ellis – told to arrest him." The next morning (July 30) VanderMeer again reviewed the Ellis evidence with Shoveller. Later that morning, he arrested and charged Ellis. Routine Order 123/87 was issued that day by Shoveller terminating Ellis' employment by reason of the charges.

August 11, 1987 – Shoveller introduced the members of the IIT to the Board at a Board meeting.

August 19, 1987 – VanderMeer met with Wolski; they were later joined by Shoveller and Moody. The sixth Gayder brief was provided to Wolski. A brief on Parnell was also provided to Wolski. During this meeting Wolski raised concerns about the Welland guns. VanderMeer's notes record: "Welland guns can't prove when he registered them. Doesn't think guns in closet constitute act of theft." Wolski asked for further witnesses to be interviewed on this subject "to tie down when guns went into Gayder's possession."

August 20, 1987 – VanderMeer and Wolski started following up on this together. They met with Inspector Jones of the OPP (Gun Registrar from 1974 to 1978) about the gun registration procedure. They also had a general discussion regarding the internal investigation.

August 21, 1987 – VanderMeer interviewed former Chief Wilson about the Welland guns.

August 22, 1987 – VanderMeer commenced an analysis of Part 9 of the OPC report, regarding Gayder's gun collection. He prepared a chart analyzing all of Gayder's registered guns, his explanations for how he obtained them and the results of investigation into those explanations. The chart points out that most of the gun certificates "run in numerical order." "This would suggest that most of the weapons were issued sequential certificate numbers by the RCMP when that Force converted from the Fanfold system in 1967/68 to the Soundex system." VanderMeer reviewed this chart with Shoveller on August 24.

August 24, 1987 – VanderMeer met Wolski again. They interviewed Robert Russell of the OPC concerning their prior investigation of Gayder's guns. Among other things Russell told them that Walsh had placed the transfer of the Welland guns in 1969.

August 31, 1987 – The Board appointed Shoveller as Chief of the Force.

September 2, 1987 – Moody sent Shoveller a memo regarding the length of time the Attorney General was taking to provide their opinion with regards to charges, and suggesting they might proceed to a public inquiry rather than wait any longer.

September 2, 1987 – Locke's report on Fleet Management was submitted to Moody who then passed it on to Shoveller. The next day (September 3) VanderMeer and Melinko submitted a memorandum to Moody regarding Locke's report to Shoveller. The memo was strongly critical of Locke.

September 2, 1987 – The RCMP responded to some serial number searches that the IIT had requested. Two serial number matches showed up on the American National Crime Information Center records of stolen guns: one from Everett, Washington and one from Sacramento, California. Later in the day Carol Berry telephoned Washington and California about these two guns. On September 4, 1987, the Sacramento Police Department mailed to Carol Berry a copy of their burglary report concerning the November 26, 1973, theft from one Frank Corson of the "California gun."

September 3, 1987 – Melinko and VanderMeer commenced preparation of a Managerial Overview, at the request of Shoveller. The report was completed on September 17, and dealt with nine separate areas ranging from hiring to the organization of central records. Shoveller provided the completed report to the Board.

September 14, 1987 – Moody told Shoveller about the California gun.

September 22, 1987 – Melinko and Berry met with Wolski. Moody was there for part of the conversation. Wolski was particularly interested in the California gun and told them: "... if you can establish that gun is stolen from California, then you've got a good case." VanderMeer was told of this the next day.

September 23, 1987 – Moody sent letters to California and Washington asking for identification of the guns whose serial numbers matched. Photographs were enclosed. VanderMeer spent the morning on the Gayder gun investigation, including discussing the California gun with Melinko. VanderMeer then telephoned the author of a magazine article about that model of gun.

September 24, 1987 – VanderMeer received a telephone call from Peter Shoniker, a lawyer friend, who said he "had been out previous night with three people from [the Attorney General's Ministry at] 18 King Street, who told him we were in trouble about charging Gayder."

September 28, 1987 – Shoveller requested an overview of the internal investigation be prepared, without naming names, for presentation to the Board. VanderMeer prepared such a report. On October 8, VanderMeer and Moody met and reviewed a draft of the report. It was later provided to the Board.

October 1, 1987 – VanderMeer met with Sherriff for about four hours and went over the Gayder briefs compiled by the IIT.

October 4, 1987 – Shoniker met with VanderMeer and reviewed the Gayder briefs.

October 4, 1987 – Mrs. Taylor did a memorandum to Shoveller concerning possible steps to be taken, including having VanderMeer charge Gayder without waiting for the Attorney General's recommendation. She also did a letter to Hunt setting out a detailed factual history of the IIT's investigation, describing the situation as a "crisis" and asking for a response concerning charges. VanderMeer did a memo to Moody dated the same day. VanderMeer's memo speculates on reasons why the Attorney General's Ministry might be deliberately delaying and covering up the Gayder matter.

Early October, 1987 – Moon met with VanderMeer and Mrs. Taylor in VanderMeer's basement. VanderMeer and Mrs. Taylor discussed their frustration about the lack of response from the Attorney General's Ministry and their suspicion that this was caused by Gayder having "political connections" within that Ministry. They discussed the possibility of a public inquiry, and asked Moon's assistance in obtaining one.

October 5, 1987 – Berry telephoned Sacramento and was informed that the previous owner had identified the gun. Melinko called Wolski right away and managed to contact him in an out-of-town court. Wolski reacted with interest and asked that the information be sent to him in Toronto. The material arrived from California the following day (October 6) and was immediately forwarded to Wolski, under cover of a letter which stated: "It is abundantly apparent that Mr. Gayder is in possession of stolen property. This revelation also casts a heavy shadow of suspicion on the remaining twelve firearms registered to him, along with the numerous other weapons under his personal control."

October 6, 1987 – The *Globe and Mail* published an article entitled "Ministry Reviewing Firearms Probe". The article stated in part that the Ministry was "awaiting some last minute information from Niagara Police investigators before making a final decision."

Around October 6, 1987 – Mrs. Taylor and Shoveller met with Hunt. Hunt indicated he had had some contact with Gayder's lawyer, and suggested Shoveller call him. Shoveller did so, and was told that Gayder would like an opportunity to tell his side of the story. No attempt had been made prior to this to contact Gayder or hear his side of the story.

October 8, 1987 – Melinko interviewed former Deputy Chief Martin Walsh regarding ex-Chief Gayder's guns. Walsh had not previously been interviewed by the IIT. His interview was not provided to the Attorney General's Ministry.

October 15, 1987 – Shoveller and members of the IIT met with Hunt in order to obtain the opinion of the Attorney General's Ministry concerning the proposed charges against Gayder. Hunt took them through the charges and gave the opinion that they should not be laid. He provided them with a copy of Wolski's memo to him on this subject, which came to the same conclusion. The discussion between Hunt and Shoveller was heated.

AFTER THE IIT

October 16, 1987 – Shoveller, Mrs. Taylor, Moody and the IIT were all upset at this recommendation from the Attorney General's Ministry. They met to discuss what to do. They went over Wolski's memo rebutting it point by point. The IIT (mostly VanderMeer – with some input from a lawyer) began preparing a brief summarizing their investigation of Gayder and criticizing Wolski's opinion. A public inquiry was discussed.

October 22, 1987 – Shoveller presented the Board with the summary brief. A public inquiry was discussed. At one point one Board member observed: "we've got our pound of flesh. This Board has got its pound of flesh. Do we want the whole carcass?" The Board resolved to seek independent legal advice concerning the conflict between the IIT's views and those of the Attorney General's Ministry. They retained Shoniker, who had already been advising VanderMeer.

October 27, 1987 – Shoniker retained three lawyers to provide the Board with opinions on whether or not Gayder could have been charged. The lawyers were warned that a public inquiry into Gayder was being contemplated by the Board. In describing the scope of such a potential inquiry the letter stated: "... I cannot conceive of a situation wherein the focus of an Inquiry, should it be ordered, would go beyond an analysis, investigation and evaluation of Mr. Gayder's activities...."

October 26, 27, 28 and 29 and November 3, 1987 – VanderMeer participated in the briefing of Shoniker and Fedorsen and of the three lawyers providing opinions.

November 3, 1987 – VanderMeer and Melinko worked on compiling vol. 7 of the Gayder briefs. Work on this multi-volume brief had been commenced by Melinko on October 26 and continued until December 1.

November 4, 1987 – VanderMeer and Melinko interviewed Alexander Ross. This was the first time Ross had been located.

November 5, 1987 – The Board met to consider the three opinions that were obtained, and to decide what to do. They resolved to request the Solicitor General to call "a public inquiry into allegations of improprieties involving Niagara Regional Police Force officers as investigated." VanderMeer attended this meeting.

November 8, 1987 – Mrs. Taylor and VanderMeer met with Jim Bradley (local MPP), to urge upon him the necessity of a public inquiry.

November 13, 1987 – By letter the Solicitor General replied to the Board's request by cautioning the Board about getting involved in operational matters, and pointing out that the decision as to whether or not to lay charges was entirely Shoveller's. The letter concluded by stating that any determination on holding an inquiry was premature until he had so decided.

November 18, 1987 – The Board issued a press release advising of their request for a public inquiry, and the Solicitor General's refusal of same, and of their direction that Chief Shoveller should review the matter and decide if charges should be laid.

November 23, 1987 – Shoveller formally informed the Board that he had reconsidered the entire matter and he was not going to lay charges. The Board then passed a further resolution calling for a public inquiry.

November 24, 1987 - The *Globe and Mail* published a front-page story by Peter Moon about the IIT and Gayder's guns based on the summary brief prepared by VanderMeer for the Board. VanderMeer had released this material to Moon because of his belief that a public inquiry was necessary.

November 25, 1987 – Chief Shoveller issued a press release outlining the past year's events, advising of his decision not to lay charges and criticizing the leak of information to the *Globe and Mail*.

November 25, 1987 – In the afternoon the Solicitor General, Joan Smith, announced in the legislature that a public inquiry would be conducted into the NRPF as a result of the renewed request for such an inquiry by the Board.

December 2, 1987 – Mrs. Taylor and others met first with McAuliffe and then with the Solicitor General. They discussed the scope and terms of reference for the inquiry. Both Gayder and the NRPA also sent letters to the Solicitor General expressing views on what should be included in the terms of reference.

February 1, 1988 – Sills met Mrs. Taylor and discussed with her some of his concerns about the Force.

March 25, 1988 – The Order in Council was passed appointing this Commission and setting out the terms of reference.

April 12, 1988 – The preliminary hearing on the charges against Ellis took place. Ellis was discharged on all counts.

June 27, 1988 – The Commission conducted its first public hearing. Submissions were made by various persons concerning their standing and funding for the hearings.

Summer and fall of 1988 – Three former members of the IIT (VanderMeer, Melinko and Hockey) were assigned to assist the Board's counsel in their preparations for the hearings of the Commission.

August 18, 1988 – The Board passed a resolution directing its counsel and the investigators assigned to them to adopt a "proactive approach" to the Inquiry. They further passed a resolution directing their counsel and counsel for the Force "to disclose no information, documents, statements and/or interviews to the Colter Inquiry counsel or investigators until such time as this Board is satisfied through its counsel, that the Colter Inquiry will a) be full and complete; b) seek and obtain the truth; and c) establish once and for all the credibility of the Niagara Regional Police Force." Notes from that meeting indicate that "Proactive is essentially a method by which we must be resourceful in assembling a body of information and evidence to the exclusion of the Inquiry Investigators and counsel."

September 6, 1988 – The second day of hearings held by the Commission. Procedural and evidential matters were addressed, but no evidence was called. Evidence was scheduled to commence on October 17, 1988.

October 12, 1988 – The Ministry announced what funding it would provide to parties.

October 17, 1988 – Submissions were made relating to the funding and the decision of Gayder's counsel to withdraw. Counsel for the Board opposed any adjournment and insisted that Gayder proceed unrepresented if necessary.

Fall of 1988 – Prior to the commencement of the evidence there was considerable political pressure in the Niagara region concerning the cost of this inquiry. The Chairman of the Regional Council, Mr. Dick, was publicly calling for the inquiry to be cancelled. He was quoted to that effect in a newspaper article of October 15, 1988, along with strenuous personal criticism of Mrs. Taylor in connection with the calling of the inquiry. Mrs. Taylor was quoted in the same article as saying "Unfortunately the regional chairman doesn't know what the inquiry is all about."

October 20, 1988 – The *Toronto Star* published a front-page article about alleged corruption in the NRPF. An unknown informant had provided that paper with a copy of the confidential OPP report on "Project Vino." Many of the allegations in that report were quoted in the article, although there is also some information directly from the informant. The Commission was unable to ascertain who leaked this document.

November 14, 1988 – The Commission commenced receiving evidence in public hearings. The evidence proceeded for some two years (with various interruptions for investigation and scheduling reasons) until November 20, 1990. The hearings received substantial coverage in the local press and were televised live all day, every day, on the local cable network. Submissions were held on various interim phases as the evidence progressed.

Mid-April, 1991 – Overall submissions were originally scheduled to be held. However, a dispute arose concerning the Notice provisions of section 5 (2) of the *Public Inquiries Act*. On May 15, 1991, all parties exchanged written notices setting out the substance of any misconduct they may urge the Commissioner to find.

June and July 1991 – Certain parties brought motions relating to the satisfaction of the Notice provisions. Decisions on those motions were appealed to the Divisional Court. That Court's reasons rejecting the appeals were issued on March 31, 1992. Three days of further evidence were then called on May 4, 5 and 7, 1992.

June 5, 1992 – Overall written submissions for all parties were filed.

June 30, 1992 – Evidence was called in reply to the submissions.

July 15, 1992 – Final reply submissions were filed.

APPENDIX C

PARTICIPANTS GRANTED STANDING

1. Sergeant John Adams
2. Civilian Carol Berry
3. Mr. Reginald Ellis
4. Ex-Chief James Gayder
5. Civilian Billie Hockey
6. Deputy Chief Peter Kelly
7. Ex-Sergeant Edward Lake
8. Ex-Sergeant Allan Marvin
9. Sergeant Gerald Melinko
10. Staff Sergeant Michael Miljus
11. Staff Superintendent Moody
12. Staff Sergeant Joseph Newburgh
13. Niagara Regional Police Association
14. Niagara Regional Police Force
15. Niagara Regional Police Services Board
16. Constable George Onich
17. Ontario Police Commission
18. Ontario Provincial Police
19. Sergeant Ronald Peressotti
20. Constable Lee Rattray (own counsel)
21. Sergeant Gerald Ryan
22. Chief John Shoveller
23. Chair Denise R. Taylor
24. Sergeant Edward Typer
25. Sergeant Cornelis VanderMeer

APPENDIX D
WITNESS LIST

Alexander, Irvine Charles
Allen, Gerald
Allan, Beverley A.
Arcaro, Eugene I.
Barlow, Alan
Barnes, Allan
Baskerville, James F.
Bell, Andrew
Berry, Alan
Berry, Carol M.
Bevan, Vincent Thomas
Booker, Percy Kenneth
Boston, William Thomas
Braun, Jack
Breen, Robin
Bryan, James F.
Chamberlain, Ivan E.
Chambers, Bruce Scott
Chiavarini, Mary
Ciszek, Frederick J.
Cleveland, Rocky
Cole, Herbert
Connors, Dennis
Crossingham, John
Crowe, Patrick
Crown, Raymond J.
D.B.
Davey, Jacklyn H.
Davidson, Kenneth R.
Dawson, Joseph V.
Deluca, Henry David
DeMarco, Mark Tiffany
Dickson, William D.
Dunlop, William D.
Eckhardt, Brian W.
Edwards, William Arthur
Ellis, Reginald Charles
Faraday, Loran
Feilde, Ronald
Feor, Alexander G.
Fraser, Douglas A.
Gayder, James A.
Gill, William C.
Gilligan, Gary
Gittings, David B.
Granton, Cheryl (nee Burnett)
Hamnett, Bernard
Hampson, Paul Martin
Hanrahan, John Robert
Harris, Donald
Harris, Robert A.
Heath, Kenneth Stanley
Herman, Alexander
Hermer, Terrance
Hill, Douglas D.
Hockey, Billie Lee
Holmes, Donald
Holt, James
Horton, Kenneth
Horton, Lawrence Russel
Hyslop, Robert
Inman, James Allan
Johnson, Edward R.
Johnson, James Edward
Johnston, Jean
Joyce, William
Keighan, Robert F.
Kelly, Peter J.
Kennedy, John Alexander
Kisur, Ronald Andrew
Knowles, Ronald C.
Knox, Maxine Ruth
Koczula, Paul P.
Kopinak, John P.
Lahey, Herschel
Lake, Edward
Lamb, Gregory Charles
Lamonte, Norman
Laurie, John
Leonard, Laurie G.
Lewis, Richard
Lightfoot, Ronald J.
Locke, Michael J.
Lorenzen, David Dr.
Maloney, Lionel Gerald
Marriott, Rodney E.

Marriott, Clayton S.
Marvin, Allan Earl
McAuliffe, Gerald
McGrath, Marie
McIntosh, Donna Jane
McLaren, Terrence M.
Melinko, Gerald Michael
Miljus, Michael
Mitchell, Kenneth G.
Moody, James L.
Moon, Peter
Murdoch, William
Myers, Lloyd
Nepon, Bruce
Nepon, Gary
Nesbitt, Brian
Newbold, Raymond
Newburgh, Joseph R.
Newburgh, Carolyn
Nicholls, Gary Edward
Noiles, David W.
O'Neil, Gregory A.
Oneschuk, H. Joy
Onich, George J.
Parkhouse, Frank H.
Parnell, Elizabeth A.
Pay, Douglas R.
Pay, Janice C.
Peressotti, Ronald P.
Pidduck, Keith
Prentice, Thomas H.
Quattrini, Lawrence John
Raike, Stan
Rattray, Lee Frank
Reed, William
Rhodes, John Ian
Richardson, Thomas A.
Roland, Ian Jonathan
Ross, Grant Alexander
Russell, Robert E.
Ryan, Gerald
Sandelli, Ronald
Saracino, Robert
Schertzer, John R.
Schmor, Larry D.
Shelley, Mary
Sherriff, Stephen Edward
Shoveller, John Edward
Sills, John F.
Simms, Brian
Smith, Robert
Smith, Richard
Soley, Earl
Solomon, Larry John
Southall, Wendy Edna
Steele, Donald
Stevens, John V.
Sullivan, Patrick
Swanwick, David M.
Swart, Melvin Leroy
Tardiff, John
Taylor, Denise Rae
Taylor, Sandra Elizabeth
Teggin, Thomas B.
Thompson, Karen
Toderick, Frank
Toth, Joseph Frank
Turner, Harley H.
Typer, Edward J.
Vanderlee, John
VanderMeer, Cornelis
Walsh, Martin
Wells, Jim
Wilcox, Isabelle Ross
Wilhelm, Paul Warren
Wilkinson, James Edgar
Wolff, John
Woodhouse, Malcolm
Woodhouse, Derwyn

APPENDIX E
LIST OF EXHIBITS

DATE	FILED BY	EX #	DESCRIPTION
09/6/88	P. Shoniker	1	Letter • August 26/88 from Shoniker and Fedorsen • re: Conflict of Interest
10/17/88	W.E.C. Colter	2	Letter • October 12/88 from Solicitor General
10/17/88	W.E.C. Colter	3	Letter • October 14/88 • re: Legal Aid Tariff
10/17/88	I. Roland	4	Donald Marshall, Jr. • Decision • May 14/87
10/17/88	F. Fedorsen	5	Letter • October 13/88 to E. Ratushny from W.A. Kelly
11/14/88	W.A. Kelly	6	Procedure N°. 16 issued October 20/86 • Processing found, seized or received property and money
11/14/88	W.A. Kelly	7	Routine Order N°. 179/85 • Revised Distribution
11/14/88	W.A. Kelly	8	Property Report Form
11/14/88	W.A. Kelly	9	Bicycle and Tricycle Report Form
11/14/88	W.A. Kelly	10	Fraudulent Document Report Form
11/14/88	W.A. Kelly	11	BRIEF • Property System • NRPF Property Directives since 1971
11/15/88	W.A. Kelly	12	Permit to convey firearms (sample)
11/15/88	W.A. Kelly	13	Firearms Registration Certificate (sample fanfold)
11/15/88	W.A. Kelly	14	Gun Registration Certificates for James A. Gayder N°. 1 - 62
11/15/88	P. Shoniker	15	Letter • September 4/87 to VanderMeer from Inspector H. Dick • re: NRPF Internal Inquiry
11/15/88	P. Shoniker	16	CPIC message • August 25/87 to Sergeant Knowles from Sergeant Vander-Meer

DATE	FILED BY	EX #	DESCRIPTION
11/15/88	F. Fedorsen	17	Restricted Weapon Registration Certificate for James Gayder
11/15/88	R. McGee	18	Transit Slip • September 9/87 to Sergeant VanderMeer from Sergeant Young, FRAS, Ottawa • re: Internal Investigation
11/15/88	W.A. Kelly	19	Restricted Weapon Registration Certificate (screen print-out) • Certificate N°. D-595841
11/16/88	W.A. Kelly	20	Gayder's Fanfold
11/16/88	W.A. Kelly	21	Property Report
11/16/88	W.A. Kelly	22	Supplementary Report
11/16/88	W.A. Kelly	23	Auction List
11/16/88	W.A. Kelly	24	Auction Receipt
11/16/88	W.A. Kelly	25	1) List for Destruction of Firearms • 2) Memorandum • June 30/88 to J. Inman, C.A.O., from Staff Sergeant Locke • re: Destruction of Firearms
11/16/88	W.A. Kelly	26	Memorandum • March 17/88 to Staff Sergeant Locke from Deputy Chief Parkhouse • re: Conversion of Found Property to Force Assets
11/16/88	W.A. Kelly	27	Memorandum • November 30/87 to Acting Deputy Chief Gittings from Acting Inspector Locke • re: Destruction of Firearms
11/16/88	W.A. Kelly	28	*Toronto Star* article • Oct. 20/88 • page 1 and 2 • Article: "Niagara Regional Police linked to crime, documents show"
11/17/88	W.A. Kelly	29	Handgun Inventory Book • 1980 - 1987 (black book)
11/17/88	W.A. Kelly	30	Rifle/Shot Gun Inventory Book • 1980 - 1987 (black book)

DATE	FILED BY	EX #	DESCRIPTION
11/17/88	W.A. Kelly	31	Memorandum • Feb. 27/76 to Deputy Chief Gayder from Deputy Chief Harris • re: Storing and Disposal - Found and Seized Property - Public Auction Sales
11/17/88	W.A. Kelly	32	Register of Seized Firearms • 1961 - 1974 (green book)
11/17/88	W.A. Kelly	33	1) Letter • May 21/87 • re: Sale of Restricted Weapons • to Acting Chief Shoveller from Staff Sergeant Newburgh 2) Letter • June 23/80 • re: Firearms Registered and Administrative Section • to RCMP Commissioner from Deputy Chief Gayder
11/17/88	W.A. Kelly	34	Internal Inquiry • 1987 • vol. VII • Section (d) photographs
11/17/88	W.A. Kelly	35	Inventory of Seized Guns Taken • February 24/87 (typed list)
01/18/89	R. Collins	35A	Sergeant Pay's hand-written inventory of Seized Gun List • Feb. 24/87 • (original copy)
11/17/88	W.A. Kelly	36	Letter and Report • October 6/87 to Wolski (Ministry of Attorney General) from Acting Deputy Chief Moody • re: James Gayder Investigation
11/17/88	W.A. Kelly	37	Martin Walsh will-say statement taken October 8/87 by Sergeant Melinko
11/17/88	W.A. Kelly	38	Frederick Wilson will-say statement taken August 21/87 by Sergeant Vander-Meer
11/24/88	P. Shoniker	39	Memorandum • Oct. 12/87 to D. Hunt, Assistant Deputy Attorney General from W. Wolski, Crown counsel • re: NRPF Internal Inquiry and Former Chief Gayder
11/24/88	P. Shoniker	40	OPC Investigation • Part IX • conducted by Alexander and Russell

DATE	FILED BY	EX #	DESCRIPTION
11/24/88	P. Shoniker	41	Weapons traded to Albion Arms • April 17/80 • Hand-written photocopy and typed copy
11/24/88	P. Shoniker	42	Oct. 15/87 • Minutes of meeting held with Attorney General's department and Internal Investigation Unit
11/24/88	P. Shoniker	43	William Murdoch will-say statement taken September 24/87 by Sergeant VanderMeer
11/24/88	P. Shoniker	44	Alexander Ross will-say statement taken November 4/87 by Sergeant VanderMeer and Melinko
11/25/88	P. Shoniker	45	Letter • June 26/85 to Ministry of Solicitor General from Chief Gayder • re: Niagara Regional Heritage Museum, plus 4 memorandums: 1) Memorandum • September 9/87 to Chief Shoveller from Deputy Chief Parkhouse • re: Police Records in Museum and Administrative Store; • 2) Memorandum • September 9/87 to Sergeant Pay from Deputy Chief Parkhouse • re: Museum Areas; • 3) Memorandum • August 31/87 to Acting Deputy Chief Moody from Sergeant VanderMeer • re: Police Records in Museum and Administration Storage; • 4) Memorandum • August 31/87 to Acting Deputy Chief Shoveller from Deputy Chief Parkhouse • re: Museum Area
11/25/88	P. Shoniker	46	3 letters Re: Museum • 1) To Brown, Ontario Police College from Inspector Barlow, NRPF • March 20/85; • 2) To Honourable George Taylor, Solicitor General from Chief Gayder • January 30/85; • 3) To Kay Jones, Chairman, Welland Historical Museum from Chief Gayder • March 18/85
11/25/88	P. Shoniker	47	Memorandum • July 31/87 to Staff Sergeant Pidduck from Sergeant Pay • re: Police Museum

DATE	FILED BY	EX #	DESCRIPTION
11/25/88	F. Fedorsen	48	Routine Order Nº. 82/87 • Acting Rank • May 15/87 • by Acting Chief Shoveller
11/29/88	W.A. Kelly	49A	Vol. Nº. 1 • NRPF Internal Inquiry 1987 • re: James Gayder
11/29/88	W.A. Kelly	49B	Vol. Nº. 2 • NRPF Internal Inquiry 1987 • re: James Gayder
11/29/88	W.A. Kelly	49C	Vol. Nº. 3 • NRPF Internal Inquiry 1987 • re: James Gayder
11/29/88	W.A. Kelly	49D	Vol. Nº. 4 • NRPF Internal Inquiry 1987 • re: James Gayder
11/29/88	W.A. Kelly	49E	Vol. Nº. 5 • NRPF Internal Inquiry 1987 • re: James Gayder
11/29/88	W.A. Kelly	49F	Vol. Nº. 6 • NRPF Internal Inquiry 1987 • re: James Gayder
11/30/88	D. Pickering	50A	Statement • October 26/88 of Denise Taylor, Chairman
11/30/88	W.A. Kelly	50B	1) Letter • November 23/87 to Denise Taylor from Chief Shoveller • re: Internal Investigation 2) November 25/87 • Press Release of Chief Shoveller
11/30/88	W.A. Kelly	51	RCMP documentation on Gayder's gun registration including microfilm dates
11/30/88	D. Pickering	52	Photograph • Weapons display case at Niagara Falls Police Station
11/30/88	D. Pickering	53	Certificate of Approval for Aylmer Ontario Police Museum • May 14/82
11/30/88	D. Pickering	54	Memorandum • April 2/73 to Staff Inspector Bevan from Deputy Chief Gayder • re: Ordering Equipment
12/5/88	W.A. Kelly	55A	Summary of *Police Act* brief • March 3/87
04/20/89	W.A. Kelly	55B	Niagara Regional Police Board of Commissioners master copy sent to Solicitor General

DATE	FILED BY	EX #	DESCRIPTION
04/20/89	W.A. Kelly	55C	Draft brief sent to Police Board Commissioners from the Internal Investigation Team
12/15/88	W.A. Kelly	56	Confidential Report • NRPF Internal Inquiry • 1987 • Re: James Gayder
12/5/88	W.A. Kelly	57A	BRIEF - Vol. N°. 1 • Weapons • page 1 - 220
12/5/88	W.A. Kelly	57B	BRIEF - Vol. N°. 2 • Weapons • page 221 - 585
12/5/88	W.A. Kelly	57C	BRIEF - Vol. N°. 3 • Weapons • page 586 - 815
12/5/88	W.A. Kelly	58	Page 5 • Summary of Weapons • (turned over to Inquiry investigators)
12/6/88	W.A. Kelly	59	Field Training Precis N°. 3/88 • Title: Weapons Metro Toronto Police
12/6/88	W.A. Kelly	60	Firearms for Disposal List for 1977
01/25/89	W.A. Kelly	60A	ORIGINAL • Firearms for Disposal List for 1977
12/6/88	R. Collins	61	Firearms Log Book • 1980 - 1983 (small, green)
12/7/88	R. Collins	62	Kenneth Heath correspondence
12/8/88	P. Shoniker	63	*Police Act* charges against James Gayder, Chief of Police • Feb. 5/87
12/8/88	D. Pickering	64	Richard Lewis's • 2 Gun Registration Certificates
12/12/88	W.A. Kelly	65	4 Letters of Correspondence • 1) September 9/88 to W.A. Kelly from I. Roland • re: Gayder and NRPF Inquiry; • 2) September 13/88 to E. Ratushny from W.A. Kelly • re: NRPF Royal Commission Inquiry • 3) October 4/88 to W.A. Kelly from E. Ratushny • re: Your File N°. 79345/802; • 4) October 13/88 to E. Ratushny from W.A. Kelly • re: NRPF Royal Commission

DATE	FILED BY	EX #	DESCRIPTION
12/13/88	R. Collins	66	Statement of Mary Chiavarini taken March 19/87 by Constable G. Onich
12/13/88	R. Collins	67	Second statement of Mary Chiavarini • April 1/87 taken by Constable G. Onich
12/14/88	D. Pickering	68	Memorandum • August 28/81 to Inspector Whitley from Sergeant Park • re: Emergency Task Force - Training Weapons
12/14/88	W.A. Kelly	69	Alexander Ross's hand-drawn picture of sword he owned
12/14/88	D. Pickering	70	Sword
12/15/88	F. Fedorsen	71	Police identification card of Sergeant Victor R. Dawson
01/10/89	W.A. Kelly	72	Original copy of weapons traded to Albion Arms • April 17/80 (4 pages)
01/10/89	W.A. Kelly	73	Photocopy of photograph of Victor R. Dawson
01/10/89	R. Collins	74	Purchase Order showing traded firearms • January 29/85
01/10/89	D. Pickering	75	Background documentation relating to January 29/85 • Purchasing of Firearms
02/6/89	R. Collins	75A	Memorandum• October 26/84 to Acting Deputy Chief Shoveller from Acting Superintendent Nelson • re: Standardization of Weapons - Disposal of Surplus Weapons
01/10/89	D. Pickering	76	Miscellaneous Weapons photographed by James Gayder
01/11/89	R. Collins	77	BRIEF • Mini-Brief IV • Firearms Found in locker N°. 9 • April 3/84 • (E. Lake Firearms)
01/11/89	R. Collins	78	St. Catharines Property Ledger • September 4/83 to July 26/84 (blue book)

DATE	FILED BY	EX #	DESCRIPTION
01/12/89	R. Collins	79	1) Property Control Form • (blank) • 2) Property Control Form • (completed sample)
01/11/89	R. Collins	80	BRIEF • Addition to Mini-Brief IV • All documentation on firearms found in locker N°. 9 • April 3/84 • (E. Lake Firearms)
01/12/89	W.A. Kelly	81	Sketch of lockers in sub-basement of 68 Church Street, St. Catharines • re: CIB
01/16/89	P. Shoniker	82	Definition • Saturday Night Specials as per: State Laws and Published Ordinances - Firearms
01/16/89	W.A. Kelly	83	Cassette tape of M. Miljus interview (copy) • re: Gayder - Guns Taken • June 17/87 • by VanderMeer and Melinko
01/16/89	B. Matheson	84	Frank Wilcox will-say statement taken April 29/87 by Sergeant Melinko
01/16/89	D. Pickering	85	List of firearms found at 11 Neilson Street • prepared by Onich **(for identification)** • Exhibit #85 • was identified by Onich on January 17/89
01/18/89	R. Collins	86	BRIEF • Barlow • Schertzer • Mini-Brief VII
01/18/89	R. Collins	87	Photographs of Police Museum at St. Catharines Police Station
01/18/89	R. Collins	88	BRIEF : Museum
01/18/89	R. Collins	89	Museum Inventory prepared by Sergeant Pay
01/18/89	P. Shoniker	90	*Evening Tribune* • June 20/85 • Article: "Fall Opening for Police Museum curator, busy getting artifacts"
01/19/89	D. Pickering	91	Photographs of the London Police Museum
01/19/89	R. McGee	92	Al Feor will-say statement • August 31/87 taken by Sergeant VanderMeer

DATE	FILED BY	EX #	DESCRIPTION
01/23/89	W.A. Kelly	93	BRIEF • Mini-Brief V • Part 1 • Other Firearm Witnesses
01/23/89	W.A. Kelly	94A	John Stevens hand-written statement • March 1/87 (photocopy)
01/23/89	W.A. Kelly	94B	John Stevens statement • March 1/87 • (typed copy)
01/23/89	W.A. Kelly	94C	John Stevens will-say statement • March 1/87 • John Stevens will-say statement • April 24/87 (photocopy)
01/23/89	W.A. Kelly	94D	Further interview of John Stevens • Commission interview • Jan. 18/89
01/24/89	W.A. Kelly	95	Firearms for Disposal List for 1978
01/24/89	W.A. Kelly	96	Firearms for Disposal List for 1979
01/24/89	R. Collins	97	Letter • December 16/69 to Chief Sheenan from Chief Laurie
01/25/89	W.A. Kelly	98	John Stevens • (original notes) • March 1/87
01/25/89	W.A. Kelly	98A	Envelope that contained John Stevens original notes
01/25/89	W.A. Kelly	99	Typed version of original John Stevens will-say statement
01/25/89	W.A. Kelly	100A	Photograph of Police Crime Prevention Display
01/25/89	W.A. Kelly	100B	Photograph of Police Crime Prevention Display
01/25/89	R. Collins	101	Original Tom and Fern Occurrence report • January 31/68
01/26/89	W.A. Kelly	102	Memorandum • 1) March 28/84 to Staff Sergeant Miljus from Inspector Holt • re: Firearms for Destruction 2) CPIC message
02/1/89	R. Collins	102A	Memorandum • May 2/84 to Staff Sergeant Miljus from Inspector Holt • re: Firearms for Destruction

DATE	FILED BY	EX #	DESCRIPTION
01/26/89	W.A. Kelly	103	Staff Sergeant Miljus Notes from interviews on February 28/87, March 25/87, April 1/87, Apr. 8/87 and May 8/87
01/30/89	P. Shoniker	104A	Copy of Staff Sergeant M. Miljus notes for February 4-5/88 and April 12/88
01/30/89	P. Shoniker	104B	Copy of Staff Sergeant Miljus notes for July 30/87
01/30/89	W.A. Kelly	104C	Copy of Staff Sergeant Miljus notes for April 20/87
01/30/89	P. Shoniker	105A	Hand-written statement of Staff Sergeant Miljus taken September 30/87 by Sergeant Melinko
01/30/89	P. Shoniker	105B	Staff Sergeant Miljus statement taken September 30/87 by Sergeant Melinko (typed copy)
02/7/89	R. Brady	106	Transcript of Sergeant Michael Miljus evidence on the Ellis Preliminary Hearing
01/31/89	R. Collins	107	Routine Order N°. 2/72 • Disposition and Location of all Departmental Revolvers • January 12/72 by Deputy Chief Gayder
03/1/89	W.A. Kelly	108 A1	Top Floor • 68 Church Street, St. Catharines • 1963 floor plan
03/1/89	W.A. Kelly	108 A2	First Floor • 68 Church Street, St. Catharines • 1963 floor plan
03/1/89	W.A. Kelly	108 A3	Basement • 68 Church Street, St. Catharines • 1963 floor plan
03/1/89	W.A. Kelly	108 A4	Sub-Basement • 68 Church Street, St. Catharines • 1963 floor plan
03/1/89	W.A. Kelly	108 B1	Sub-Basement • 68 Church Street, St. Catharines • 1970 floor plan
03/1/89	W.A. Kelly	108 B2	First Floor • 68 Church Street, St. Catharines • 1970 floor plan
03/1/89	W.A. Kelly	108C	Basement (Garages) • 68 Church Street, St. Catharines • 1972 floor plan

DATE	FILED BY	EX #	DESCRIPTION
03/1/89	W.A. Kelly	108D	First Floor • 68 Church Street, St. Catharines • 1977 floor plan
01/31/89	R. Collins	109	BRIEF • Mini-Brief VII • Toderick Firearm - Hermer Firearm
02/1/89	W.A. Kelly	110	Article: Mauser "Broomhandle" from the Boer War to Today
02/1/89	F. Fedorsen	111	Staff Sergeant Terrence McLaren will-say statement
02/1/89	D. Pickering	112	Memorandum • February 6/85 to Sergeant Dagenais from Gary Sanderson • re: Weapons
02/2/89	P. Shoniker	113	1) Minutes of June 26/79 meeting of Police Board of Commissioners • 2) Report to Davies, Quebec City Police Board of Commissioners from Chief Harris • re: Award of Quotations N°. 79-Q-133 Service Revolver
02/6/89	D. Pickering	113A	1) Report - Award of Quotation N°. 79-Q-133 to Niagara Regional Board of Commissioners from Chief Harris • 2) Bid Evaluation Sheet N°. 79-Q-133 • Police Revolvers June 7/79
02/6/89	R. Collins	114	Letter • January 20/89 to Judge Colter from R.T. Harb, MD • re: Fred Wilson
02/6/89	R. Collins	115	1) Memorandum • November 15/77 to Sergeant Chamberlain from Deputy Chief Walsh • re: Marlin 30-30 Winchester • Serial N°. 2500870 • 2) Memorandum • February 15/86 to Deputy Chief Walsh from Sergeant Chamberlain • re: Marlin 30-30 Rifle
02/22/89	R. Collins	115A	1) Memorandum • February 4/82 to Deputy Chief Walsh from Sergeant Chamberlain • re: Service gun • 2) Handwritten receipt January 16/85 from Dagenais

DATE	FILED BY	EX #	DESCRIPTION
02/6/89	F. Fedorsen	116	Minutes of Police Board of Commissioners Meeting of July 30/80 • re: Bomb Disposal Suit
02/13/89	F. Fedorsen	117A	Cassette Tape • Bevan interview on May 7/87 taken by Moody and Newburgh
02/16/89	F. Fedorsen	117B	Transcript of Bevan interview May 7/87 taken by Moody and Newburgh
02/13/89	D. Pickering	118	BRIEF • Mini-Brief N°. 9 • Other Gun Witnesses
02/13/89	W.A. Kelly	119	Inventory of remaining items from closet 374 taken April 3/87 by Billie Hockey
02/14/89	W.A. Kelly	120	Billie Hockey will-say statement taken by 1987 Internal Investigation Unit (but not in Brief, typed copy)
02/14/89	D. Pickering	121	D. Pickering sketch of Deputy Chief Gayder's office
02/15/89	W.A. Kelly	122	Noiles documents • re: Gun Trades
02/15/89	W.A. Kelly	123	Elizabeth Parnell's sketch of 1st floor at Police Station, 68 Church Street, St. Catharines
02/16/89	W.A. Kelly	124	List of Registrations received by OPC from Teggin
02/16/89	W.A. Kelly	125	Letter • January 29/79 to Ministry of Solicitor General J. Villemaire, Acting Superintendent from Chief Harris • re: St. Catharines Historical Museum
02/16/89	W.A. Kelly	126	Robert Russell's July 6/84 notes of interviews with Chief Gayder, Deputy Chief Walsh, Mrs. Bosak • re: Chief Gayder's gun collection
08/13/90	P. Shoniker	126A	Expansion notes prepared by R. Russell prior to testifying

DATE	FILED BY	EX #	DESCRIPTION
02/16/89	W.A. Kelly	127	Letter • January 15/82 to All Municipal Authorities and Chiefs of Police in Ontario from Shaun McGrath, Chairman, OPC • re: Guidelines for the Disposal of Firearms by Municipal Police Forces
02/22/89	R. Collins	128	Staff Sergeant Gary Nicholls • Firearms Audit • January 1/83 to June 30/86
02/27/89	W.A. Kelly	129	Memorandum • June 19/84 to File - McAuliffe from Inspector Parkhouse • re: Meeting with CBC Reporter McAuliffe
03/1/89	D. Pickering	130	Gayder's Curriculum Vitae
03/1/89	D. Pickering	131	Photographs of Museum at Peel Regional Headquarters taken by J. Gayder
03/1/89	D. Pickering	132	Photographs of Museum at Ontario Police College at Aylmer taken by J. Gayder
03/1/89	D. Pickering	133	Additional photographs of Museum at Ontario Police College in Aylmer taken by Larry Godfrey (OPC)
03/1/89	D. Pickering	134	Draft Regulation under the *Police Act* concerning the disposal of firearms
03/2/89	D. Pickering	135	Copies of Registrations of Gayder's guns unaccounted for
03/2/89	D. Pickering	136	Guns registered to James Gayder which were neither at his home or reported as found in closet 374
03/2/89	D. Pickering	137	Summary of anticipated evidence from Billie Hockey **(for identification)**
03/2/89	D. Pickering	138	1968 photograph of James Gayder's son, John
03/2/89	D. Pickering	139	CC.44 Application to register a firearm • July 17/69 by James Gayder

DATE	FILED BY	EX #	DESCRIPTION
03/2/89	D. Pickering	140	1) Letter • December 11/68 to Gayder from Swan, Registrar • re: Registration of Firearms • 2) CC.44 Application to register a firearm • December 16/68 • by J. Gayder
03/2/89	D. Pickering	141	Photograph • 1969 • showing Over and Under Baretta and M-1 Carbine
03/2/89	D. Pickering	142	Letter • March 4/87 to Denise Taylor and Board Members from Gayder • re: Letter of Retirement
03/2/89	D. Pickering	143	Press Release • Wednesday, March 4/87 by James Gayder, Chief of Police, NRPF
03/7/89	W.A. Kelly	144	Firearm Registration Certificate to James Arthur Gayder • FRC N°. D-111942 • MAKE: Rohm, serial N°. 938-658
03/7/89	W.A. Kelly	145	Firearm Registration Certificate to James Arthur Gayder • FRC N°. D-595847 • MAKE: Iver Johnson, serial N°. S-123
03/7/89	W.A. Kelly	146	Firearm Registration Certificate to James Gayder • FRC N°. D-178583 • MAKE: Harrington & Richardson, serial N°. 849
03/8/89	P. Shoniker	147	Application to register firearms by Rossie Grose
03/8/89	P. Shoniker	148	O.P.P. • Transport Restricted Weapons forms for Rossie Grose
03/8/89	P. Shoniker	149	Photocopy of microfilmed Property Tags
03/9/89	W.A. Kelly	150	Light tan canvas bag found in closet 374
03/9/89	W.A. Kelly	150A	Brown gym bag found in closet 374
03/9/89	W.A. Kelly	151	2 transcripts • re: *Her Majesty the Queen vs. Walter Reintaler* • March 8/82 and April 15/82

DATE	FILED BY	EX #	DESCRIPTION
03/9/901	D. Pickering	152	Diagram of Chief's and Secretary's office
04/3/89	R. Collins	153	BRIEF • Mini-Brief VIII • Edward Lake (1976 *Police Act* Charges)
04/4/89	W.A. Kelly	154	Edward Lake's notes • September 13-14/82, November 5-9/82, November 14/82, November 17-18/82
04/4/89	W.A. Kelly	155	Photocopy of microfilmed Property Tags
04/4/89	R. Collins	156	BRIEF • 11 Neilson Street • Files • re: Weapons
04/4/89	D. Pickering	157	Handgun trade list with "F" numbers
04/6/89	W.A. Kelly	158	Constable Al Feor's notes from September 27/84 to October 12/84
04/10/89	W.A. Kelly	159	St. Catharines Property Ledger • July 26/84 to May 15/85 (blue book)
04/10/89	B. Shilton	160	Memorandum • February 11/76 to Deputy Chief Gayder from Staff Sergeant Ciszek • Preliminary Report Only : Sergeant Lake (also found in Exhibit #153)
04/10/89	B. Shilton	161	Memorandum • February 10/76 to Deputy Chief Gayder from Inspector W. Murdoch • re: Internal Investigation - Sergeant Lake
04/10/89	B. Shilton	162	William Murdoch will-say statement • re: Edward Lake
12/12/89	W.A. Kelly	163	Cassette Tape • Robert Smith interview • June 2/87 by VanderMeer and Newburgh
12/12/89	W.A. Kelly	164	Transcript • Robert Smith interview • June 2/87 by VanderMeer and Newburgh
04/13/89	W.A. Kelly	165	Letter • April 4/89 from Dr. E. T. Oinonen • re: Norman Fach
04/13/89	W.A. Kelly	166	BRIEF • Diamonds
04/13/89	W.A. Kelly	167	BRIEF • Silver Tea Service

DATE	FILED BY	EX #	DESCRIPTION
04/13/89	W.A. Kelly	168	Current Organizational Chart for the Niagara Regional Police Force
04/13/89	W.A. Kelly	169	Memorandum • February 24/89 to J. Inman from Inspector Locke • re: Destruction of Firearms
04/13/89	W.A. Kelly	170	Niagara Regional Police Force Regulations • (draft copy)
04/13/89	W.A. Kelly	171	Routine Order N°. 14/89 • Forfeiture of Weapons • Section 491 • *Criminal Code of Canada*
05/3/89	W.E.C. Colter	171A	Letter • March 7/89 to Commissioner Colter from Chief Shoveller • re: Routine Order N°. 14/89
04/13/89	W.A. Kelly	172A	Information • re: Payment to Earl White for 2 Firearms by NRPF
04/13/89	W.A. Kelly	172B	Information • re: Payment to Terrence Hermer for 1 Firearm
04/13/89	W.A. Kelly	172C	Information • re: Complaint from Albert Andrews of non-return of seized firearm
04/20/89	R. Collins	173	BRIEF 11 • Greenfield Gun
04/20/89	W.A. Kelly	174	Occurrence Reports • re: Kisur Evidence
05/9/89	R. Collins	175	Car N°. 119 - 1977 Plymouth Maintenance Records and Gas Consumption for 1977 and 1978
05/9/89	R. Collins	176	Car N°. 139 - 1981 Dodge Diplomat Motor Vehicle Service Log (blue book)
05/9/89	R. Collins	177	Monthly Vehicle Mileage log for all Force Cars 1980 - 1982 (black book)
05/9/89	R. Collins	178	Diagram drawn by M. Miljus of 11 Neilson Street
05/15/89	W.A. Kelly	179	BRIEF • Quartermasters
05/15/89	W.A. Kelly	180	Vehicle Inspection Program Form (blank)

DATE	FILED BY	EX #	DESCRIPTION
05/15/89	W.A. Kelly	181	3-Part Internal Repair Order Form (blank)
05/15/89	W.A. Kelly	182	Tire Replacement Authorization Form (blank)
		183	NUMBER WAS RESERVED BUT NOT USED
05/15/89	W.A. Kelly	184	Computer printout of Staff Sergeant Locke's Preventative Maintenance Program
05/16/89	W.A. Kelly	185	Checkpoint Chrysler invoice • October 9/84 • re: Betty Parnell - Repair and Paint Job - Police Chief Staff - 77 Cutlass
05/16/89	W.A. Kelly	186	Checkpoint Chrysler invoice • October 9/84 (copy) and Checkpoint Chrysler deposit slip • October 29/84
05/16/89	W.A. Kelly	187	Niagara Regional Police Force Internal Inquiry • 1987 • re: Elizabeth Parnell
05/17/89	R. Collins	188A	Bridgestone Tire " 407 "
05/17/89	R. Collins	188B	Bridgestone Tire " 407 "
05/17/89	R. Collins	189A	Firestone Tire " 721 "
05/17/89	R. Collins	189B	Firestone Tire " 721 "
05/18/89	R. Collins	190	Documents • re: Tender 84-T-39 form of Tender from Firestone Company, page 847 - 870
05/18/89	R. Collins	191	Documents • re: Tender 85-T-39 form of Tender from Direct Tire Company, page 871 - 887
05/18/89	R. Collins	192	Agreement • April 26/87 • between Reg Ellis and Sergeant VanderMeer • re: No Criminal Charges - exchange for full co-operation
05/23/89	R. Collins	193	Memorandum • March 20/80 to Inspector Fare from Staff Sergeant Stevens • re: Tires for Police Cruisers

DATE	FILED BY	EX #	DESCRIPTION
05/23/89	R. Collins	194	Memorandum • April 30/87 to Acting Chief Shoveller from Deputy Chief Parkhouse • re: Civilian Member - Reg Ellis
05/23/89	R. Collins	195	Tire Maintenance Survey
05/23/89	W.A. Kelly	196	Memorandum • April 13/88 to Chief Shoveller from Sergeant VanderMeer • re: Ellis Preliminary Hearing of April 12/88 and storage of exhibits
05/24/89	R. Collins	197	Memo • May 8/87 to R. Harris and R. Marriott from Acting Chief Shoveller • re: Report on Work Assignment
05/24/89	R. Collins	198	Rodney Marriott will-say • 1987 Internal Investigation
05/24/89	W.A. Kelly	199	1) Telephone Slip • January 13/87 • 2) Gayder's notes • January 14/87
05/24/89	D. Pickering	200	1) Memorandum • September 23/81 to Acting Inspector Swanwick from Superintendent Bevan • re: Force Mechanic • 2) Memorandum • February 12/82 to Deputy Chief Gayder from Ellis • re: Special Request • 3) Memorandum • February 17/82 to Reg Ellis from Deputy Chief Gayder • re: Special Request, Part-Time Employment
05/24/89	F. Fedorsen	201	BRIEF • Complaint N°. 1 • vol. II • Allegation of Misconduct against VanderMeer • re: Bank Accounts of Parnell • January 19/87
05/25/89	F. Fedorsen	202	Transcript of Sergeant VanderMeer's Interview of Reginald Ellis • April 25/87
05/30/89	R. Brady	203	Original hand-written notes of VanderMeer's interview of Reg Ellis • April 25/87
05/31/89	W.A. Kelly	204	Computer print-out of Repair history on Car N°. 243
05/31/89	W.A. Kelly	205	Four cheques of Elizabeth Parnell payable to Reg Ellis

DATE	FILED BY	EX #	DESCRIPTION
05/31/89	W.A. Kelly	206	Checkpoint Chrysler's bid on Tender N°. 85-T-32
05/31/89	W.A. Kelly	207	Summary sheet of Checkpoint Chrysler's bid on Tender N°. 85-T-32
05/31/89	W.A. Kelly	208	Garage Register for Checkpoint Chrysler
05/31/89	W.A. Kelly	209	M.F.I. Inspection Report • May 02/86 M.F.I. Inspection Report • May 26/86 Vehicle Inventory Record and Control
06/5/89	R. Collins	210A	BRIEF • Special Fund • vol. N°. 1
06/5/89	R. Collins	210B	BRIEF • Special Fund • vol. N°. 2
06/5/89	R. Collins	211A	BRIEF • Special Account, Royal Bank of Canada Bank Statement and Disbursement • vol. A
06/5/89	R. Collins	211B	BRIEF • Special Account, Royal Bank of Canada Bank Statement and Disbursement • vol. B
06/5/89	R. Collins	212A	Tag, used for bike auction, (perforated)
06/5/89	R. Collins	212B	Receipt, (carbon copy)
06/5/89	R. Collins	213A	Inventory of bicycle auction • October 22/88
06/5/89	R. Collins	213B	Supplementary Report • Bicycle Disposal
06/5/89	R. Collins	213C	Auction Receipts • Bicycle (blue)
06/5/89	R. Collins	214A	Inventory of miscellaneous auction • October 22/88
06/5/89	R. Collins	214B	Supplementary Reports • miscellaneous
06/5/89	R. Collins	214C	Auction Receipt • miscellaneous
06/5/89	R. Collins	215	NRPF bicycle auction • instructions given to bidders
06/5/89	R. Collins	216	Ledger • Special Fund Account
06/6/89	R. Collins	217	Curriculum Vitae of Donald Russell Holmes

DATE	FILED BY	EX #	DESCRIPTION
06/19/89	R. Collins	218A	BRIEF • Niagara Regional Police Force Vehicle Repairs • vol. 1
06/19/89	R. Collins	218B	BRIEF • Niagara Regional Police Force Vehicle Repairs • vol. 2
06/19/89	R. Collins	219	BRIEF • Repairs to NRPF Vehicles Prior to Trade
06/19/89	R. Collins	220	BRIEF • Rodney Marriott • Purchase of a 1979 Dodge Aspen • NRPF • Unit Nº. 128
06/19/89	R. Collins	221	BRIEF • John Valentine Stevens • Purchase of Ford • NRPF • Unit Nº. 424
06/19/89	R. Collins	222	BRIEF • Inspector Clayton Marriott • Purchase of a NRPF Vehicle known as Fleet Nº. 14
06/19/89	R. Collins	223A	BRIEF • Ronald Bevan • vol. Nº. 1
06/19/89	R. Collins	223B	BRIEF • Ronald Bevan • vol. Nº. 2
06/19/89	R. Collins	224	BRIEF • James Gayder • Siren
06/19/89	R. Collins	225	BRIEF • James Gayder • Trailer Hitch
06/19/89	R. Collins	226A	BRIEF • Allegations against Reginald Ellis regarding Auto Repairs and Property from 11 Neilson Street • vol. Nº. 1
06/19/89	R. Collins	226B	BRIEF • Allegations against Reginald Ellis regarding Auto Repairs and Property from 11 Neilson Street • vol. Nº. 2
06/19/89	R. Collins	227	BRIEF • Lawrence Quattrini
06/19/89	R. Collins	228	BRIEF • Onich Allegation Gayder and Bicycles
06/19/89	R. Collins	229A	BRIEF • Michael Miljus
06/19/89	R. Collins	229B	BRIEF • Michael Miljus • pages 280 - 569
06/19/89	R. Collins	229C	BRIEF • Mini-Brief • Michael Miljus
06/19/89	R. Collins	230	Work Order • Independent Auto Trim and Glass • Nº. 7404 • July 3/81

DATE	FILED BY	EX #	DESCRIPTION
06/20/90	R. Collins	231	Checkpoint Chrysler invoice • February 16/83 • Repair Order N°. 55039 • Brown Fairmont • NRPF vehicle N°. 134
06/21/89	P. Shoniker	232	Part of minutes of Niagara Regional Board Commissioners of Police • Ordered on Motion • February 12/87 • C. 61 • Sale of Stolen Goods
06/21/89	P. Shoniker	233	Excerpt from confidential minutes of meeting of Niagara Regional Board of Commissioners of Police • February 12/87
06/21/89	P. Shoniker	234	Letter • February 18/87 to Larry Quattrini from Don Holmes • re: Retaining Investigative Accounting Service
06/21/89	P. Shoniker	235	Part of minutes of Niagara Regional Board of Commissioners of Police • Ordered by the Board • C.79 • February 19/87 • Special Account
06/21/89	P. Shoniker	236	Part of minutes of confidential meeting of Niagara Regional Board of Commissioners of Police • C.99 • March 12/87 • Special Account Investigation Report
06/21/89	P. Shoniker	237	Letter • March 31/87 to Larry Quattrini from Don Holmes • re: Review of Special Fund
06/21/89	P. Shoniker	238	Part of minutes of Niagara Regional Board of Commissioners of Police • C. 132 • April 16/87 • Special Account Investigation
06/21/89	P. Shoniker	239	Excerpt from confidential minutes of meeting of Niagara Regional Board of Commissioners of Police • April 16/87
06/21/89	P. Shoniker	240	Order of Motion • Niagara Regional Board of Commissioners of Police Confidential Meeting • July 8/82 • S.35 • Revenue from Special Account

DATE	FILED BY	EX #	DESCRIPTION
06/21/89	P. Shoniker	241	Memorandum • September 21/87 to Chief Shoveller from Larry Quattrini • re: Special Function • C. 299
06/21/89	P. Shoniker	242	Excerpt from meeting of Niagara Regional Board of Commissioners of Police • February 19/87 • re: Audit by Don Holmes
06/22/89	F. Fedorsen	243	Memorandum • February 17/82 to Reginald Ellis from Deputy Chief Gayder • re: Special Request, Part-Time Employment
06/26/89	R. Collins	244	Routine Order N°. 111/80 and Routine Order N°. 74/81 and duty rosters of M. Miljus
06/26/89	R. Collins	245	Passenger Motor Vehicle Permit • VIN R141K6A140674 • Plymouth Fury 1976 Brown registered to Mike Miljus
06/26/89	R. Collins	246	Cheque • March 1/83 to Brock Ford Mercury Sales from Mike Miljus to purchase 1979 Ford Fairmount N°. 134
06/26/89	R. Collins	247	Cheque • August 9/84 to Autoland Chrysler (1981) Ltd. from Mike Miljus to purchase 1980 Plymouth Volare (red)
06/26/89	R. Collins	248	Excerpts from Mike Miljus' notebook • May 3-8/81 and May 23-29/81
06/26/89	R. Collins	249	Personal notebook of Ihma Miljus • re: $750.00 entry of July 15/81, purchase of car
07/31/89	D. Pickering	250	Addendum to Press release • November 23/87
08/2/89	W.A. Kelly	251	Excerpt from Gerry McAuliffe's notebook • July 27/83
08/2/89	W.A. Kelly	251A	Typed excerpt from Gerry McAuliffe's notebook • July 27/83 (hand-written)
08/2/89	W.A. Kelly	252	July 3/84 • transcript of CBC Broadcast • re: James Gayder

DATE	FILED BY	EX #	DESCRIPTION
08/2/89	W.A. Kelly	252A	July 5/84 • transcript of CBC Broadcast • re: James Gayder
08/2/89	W.A. Kelly	253	Excerpt from Gerry McAuliffe's notebook • re: Parkhouse • June 25/84
08/2/89	W.A. Kelly	254	McAuliffe interview with Deputy Chief Gayder of NRPF • June 6/83
08/2/89	W.A. Kelly	255	Operational Report • re: DeMarco with attachments • tape with logo of NRPF, page 3 of 18 of transcript. Document-Legal Procedure
05/23/90	R. Collins	255A	Original photocopy received by McAuliffe from DeMarco • January 29/85
05/23/90	R. Collins	255B	Jim Bryan's copy
05/23/90	R. Collins	255C	Martin Walsh's copy
05/23/90	R. Collins	255D	Clayton Ruby's copy
08/3/89	W.A. Kelly	256	Release from OPP Investigation of NRPF (Illegal Wiretap Allegations) • Superintendent M.P. McMaster, CIB • Thursday, December 4/86
08/3/89	R. Collins	257	BRIEF • Mini-Brief N°. 2 • re: Michael Miljus
08/8/89	R. Collins	258	BRIEF • Reg Ellis • re: Allegations made while working at 11 Neilson Street
08/9/89	I. Binnie	259	Hand-writing analysis of Exhibit #255 by Miss Duncan
08/10/89	F. Rowell	260	Repair Analysis by Inspector Locke
08/14/89	R. Collins	261	Robert Harris hand-written will-say statement • July 29/87
08/14/89	W.A. Kelly	262	Bible Sheet 1980 Volare repairs • Car N°. 458 • May 9/81 to July 25/81
08/14/89	W.A. Kelly	263	Receipts • Peninsula Collision Service Ltd.• re: Car N°. 348

DATE	FILED BY	EX #	DESCRIPTION
08/15/89	R. Collins	264	Hard copy of Workorder from Checkpoint Chrysler
08/15/89	E. Ratushny	265	Interview of Gerald Allen by Robin Breen • August 9/89
08/28/89	W.A. Kelly	266A	BRIEF • Hiring Practices • vol. I • *Police Act* Charges - James Gayder
08/28/89	W.A. Kelly	266B	BRIEF • Hiring Practices • vol. II • *Police Act* Charges - James Gayder
08/28/89	W.A. Kelly	266C	BRIEF • Hiring Practices • vol. III • *Police Act* Charges - James Gayder
08/29/89	W.A. Kelly	267A	Applicant Material • re: Thaddeus Joseph Sudol
08/29/89	W.A. Kelly	267B	Applicant Material • re: Ronald Andre Quellette
08/29/89	W.A. Kelly	267C	Applicant Material • re: David Mark Nugent
08/29/89	W.A. Kelly	268	Police folder • Monday, January 5/87 • including 2 envelopes and appraisal board forms for Stotts & Waters
08/29/89	D. Pickering	269	Memorandum • November 29/84 • To Chief Gayder from Deputy Chief Walsh • re: Selection Boards Police Constables
08/29/89	D. Pickering	270A	Memorandum • October 19/87 to Chair Denise Taylor from Chief Shoveller • re: Police Applicant Selection Process
08/29/89	D. Pickering	270B	Memorandum • October 28/87 to Chief Shoveller from Quattrini • re: 5 to 1 Ratio
08/29/89	P. Shoniker	271	Memorandum • November 4/87 to Chief Shoveller from Denise Taylor • re: Police Applicants
08/29/89	P. Shoniker	272	Original 9 pages of Minutes (Tab N°. 8) of material referred to by I. Wilcox

DATE	FILED BY	EX #	DESCRIPTION
08/30/89	W.A. Kelly	273	Mrs. Wilcox's typed notes • Excerpts from February 10/87 • discussing amendments to December 22/86 Meeting
08/30/89	P. Shoniker	274	Photocopy of Regulation 791 of the *Police Act* of Ontario • Section 32
08/30/89	P. Shoniker	275	Package of material provided to all applicants for the position of Police Constable
08/30/89	R. Collins	276	Minutes of the Personal Monitoring Committee • December 22/86
08/30/89	W.A. Kelly	277	Package of Documents • January 16/86 • Selection Board Results
09/5/89	W.E.C. Colter	278	Letter • September 1/89 to Mark DeMarco from Herman Turkstra • re: Request for Standing
09/5/89	R. Collins	279	Attachments to February 10/87 Meeting • Board of Commissioners of Police
09/5/89	W.A. Kelly	280A	Police Board Meeting • Thursday January 15/87 • typed notes of E. Parnell • short-hand notes
09/5/89	W.A. Kelly	280B	Police Board Meeting • January 20/87 • Special Board Meeting • re: Hiring Practices • typed notes of E. Parnell (short-hand notes)
09/5/89	R. Collins	281	Memorandum • October 15/86 to Deputy Chief Shoveller from Staff Superintendent Moody • re: Selection Board - Shawn Robert Clarkson
09/5/89	R. Collins	282	Excerpt from Staff Superintendent Moody's notes • re: Hiring
09/5/89	R. Collins	283	Police Applicants • Monday, January 26/87 • Police Applicants • Tuesday, January 27/87
09/11/89	W.A. Kelly	284	Police Board of Commissioners Minutes of Meeting • October 7/86 • Personal Monitoring Committee

DATE	FILED BY	EX #	DESCRIPTION
09/11/89	W.A. Kelly	285	Police Board of Commissioners Minutes of Meeting • October 14/86 • Personal Monitoring Committee
09/12/89	P. Shoniker	286	Letter • November 28/86 to W. Dickson from H. Daniel, Harris, Barr • re: Elizabeth Parnell - Salary Increase
09/12/89	W.A. Kelly	287A	Letter• August 13/86 to Commissioner Taylor from Acting Chief Shoveller • re: Documents pertaining to applicant testing - employment on Force
09/12/89	W.A. Kelly	287B	Report • re: Applicant Testing/Police Officers
09/13/89	W.A. Kelly	288	Hand-written notes of D. Taylor • events that occurred at certain Monitoring committee meetings
09/14/89	D. Pickering	289	Members of Governing Authorities Relationship with individual Members of the Force
09/14/89	D. Pickering	290	Limitations of a Board Section 31 of Regulation 791/80
09/14/89	P. Shoniker	291	Letter • January 5/87 to Clayton Marriott from Ron Brady • re: C. VanderMeer
09/14/89	P. Shoniker	292	Draft • *Police Act* Charges
09/19/89	W.A. Kelly	293	Notes of Sandy Taylor of January 15/87 Meeting of Board of Commissioners
09/19/89	W.A. Kelly	294A	*St. Catharines Standard* article • August 6/86 • "Police Force - 27% Related"
09/19/89	W.A. Kelly	294B	*St. Catharines Standard* article • September 10/86 • "Hiring of Relatives Increasing on NRP"
09/19/89	W.A. Kelly	294C	*St. Catharines Standard* article • September 12/86 • "Police Board Votes for a Review"

DATE	FILED BY	EX #	DESCRIPTION
09/19/89	W.A. Kelly	295	Letter • September 8/86 to William Dickson from Chief Gayder • re: Family Relationships NRPF
09/19/89	W.A. Kelly	296	Letter • September 19/89 to W.E.C. Colter from Faye McWatt • re: Standing for Internal Investigation Team
10/12/89	R. Collins	297A	Index of Exhibits
10/12/89	R. Collins	297B	Index of Statements
10/12/89	R. Collins	297C	Index of Information • (already filed) • Gayder Brief • Exhibit #49A • vol. I; Gayder Brief (already filed) Exhibit #49B • vol. II; Gayder Brief (already filed) Exhibit #49C • vol. III; Gayder Brief (already filed) • Exhibit #49D • vol. IV; • Gayder Brief (already filed) • Exhibit #49E • vol. V; Gayder Brief (already filed) • Exhibit #49F • vol. VI
10/12/89	R. Collins	298A	Gayder Brief • vol. VII
10/12/89	R. Collins	298B	Gayder Brief • vol. VII • (A)
10/12/89	R. Collins	298C	Gayder Brief • vol. VII • (B)
10/12/89	R. Collins	298D	Gayder Brief • vol. VII • (ci)
10/12/89	R. Collins	298E	Gayder Brief • vol. VII • (cii)
10/12/89	R. Collins	298F	Gayder Brief • vol. VII • (ciii)
10/12/89	R. Collins	298G	Gayder Brief • vol. VII • (civ) • Gayder Brief (already filed) • Exhibit #34 • vol. VII • (D)
10/12/89	R. Collins	299A	BRIEF • Miljus • vol. I
10/12/89	R. Collins	299B	BRIEF • Miljus • vol. II
10/12/89	R. Collins	299C	BRIEF • Miljus • vol. III
10/12/89	R. Collins	300A	BRIEF • Stevens • vol. I
10/12/89	R. Collins	300B	BRIEF • Stevens • vol. II (already filed) • BRIEF • Elizabeth Parnell • Exhibit #187

DATE	FILED BY	EX #	DESCRIPTION
10/12/89	R. Collins	301	BRIEF • Rodney Marriott
10/12/89	R. Collins	302	*Regina vs Ronald F. Bevan*
10/12/89	R. Collins	303A	BRIEF • Reg Ellis • vol. I
10/12/89	R. Collins	303B	BRIEF • Reg Ellis • vol. II
10/12/89	R. Collins	303C	BRIEF • Reg Ellis • vol. III • (already filed) Internal Report to Commission • Exhibit #56 • re: Gayder
10/12/89	R. Collins	304	Overview
10/12/89	R. Collins	305A	Overview • vol. I • Managerial Projects and Solutions
10/12/89	R. Collins	305B	Overview • vol. II • Managerial Projects and Solutions • April 20/90 • (already filed) Niagara Regional Police Board of Exhibit #55B • Commissioners Master Brief sent to the Solicitor General • April 20/90 • (already filed) draft brief sent to the Niagara Exhibit #55 • Niagara Regional Board of Commissioners from the Internal Investigation Team
10/12/89	R. Collins	306	Major Occurrence Log • Special Investigation
10/12/89	R. Collins	307A	Appendix to Internal Investigation Documents
10/12/89	R. Collins	307B	Appendix to Internal Investigation • vol. N°. 6A - C, E to F • Witness Statements
10/12/89	R. Collins	307C	Appendix to Internal Investigation • vol. N°. 7G - M • Witness Statements
10/12/89	R. Collins	307D	Appendix to Internal Investigation • vol. N°. 8N - R • Witness Statements
10/12/89	R. Collins	307E	Appendix to Internal Investigation • vol. N°. 9 "S" • Witness Statements
10/12/89	R. Collins	307F	Appendix to Internal Investigation • vol. N°. 10T - Y • Witness Statements and Appendix D

DATE	FILED BY	EX #	DESCRIPTION
10/12/89	R. Collins	308	BRIEF • Internal Investigation • re: Onich
10/12/89	R. Collins	309	BRIEF • Internal Investigation • re: Joe Newburgh
11/1/89	F. Mcwatt	309B	1) Sergeant Newburgh notes previous to February 18/87 • 2) Plus February 14/84
10/12/89	R. Collins	310	BRIEF • Internal Investigation • re: Melinko
10/12/89	R. Collins	311	BRIEF • Internal Investigation • re: P.C. Lee Rattray
10/12/89	R. Collins	312	BRIEF • Internal Investigation • re: Carol Berry, Civilian
10/12/89	R. Collins	313	BRIEF • Internal Investigation • re: Billie Hockey, Civilian
10/12/89	R. Collins	314	BRIEF • Internal Investigation • re: Denise Taylor
10/12/89	R. Collins	315A	BRIEF • Internal Investigation • re: Chief Shoveller (N°. 1)
10/12/89	R. Collins	315B	BRIEF • Internal Investigation • re: Chief Shoveller (N°. 2)
10/12/89	R. Collins	316A	BRIEF • Internal Investigation • re: James Moody • vol. N°. I
10/12/89	R. Collins	316B	BRIEF • Internal Investigation • re: James Moody • vol. N°. II
10/12/89	R. Collins	316C	BRIEF • Internal Investigation • re: James Moody • vol. N°. IIa
10/12/89	R. Collins	316D	BRIEF • Internal Investigation • re: James Moody • vol. N°. III
10/12/89	R. Collins	317A	BRIEF • Internal Investigation • re: Sergeant VanderMeer • vol. N°. I
10/12/89	R. Collins	317B	BRIEF • Internal Investigation • re: Sergeant VanderMeer • vol. N°. II
10/12/89	R. Collins	317C	BRIEF • Internal Investigation • re: Sergeant VanderMeer • vol. N°. III

DATE	FILED BY	EX #	DESCRIPTION
10/12/89	R. Collins	317D	BRIEF • Internal Investigation • re: Sergeant VanderMeer • vol. N°. IV
10/17/89	W.E.C. Colter	318A	Notes of Denise Taylor Meeting with R. Brady
10/17/89	W.E.C. Colter	318B	Notes of Denise Taylor (pages before and after) meeting with Ron Brady
10/19/89	B. Miller	319	*Globe and Mail* Report • Peter Moon • 2 articles • October 18/85 • 1) "A friend in need" 2) "Provoked probe to thwart police sergeant, man says"
10/19/89	B. Miller	320	Memorandum • January 6/84 to Superintendent Shoveller from Deputy Chief Walsh • re: C. and Sergeant Typer
10/19/89	B. Miller	321	Notebook of Denise Taylor • January 17/86 to January 22/86
10/24/89	B. Matheson	322	Memorandum • re: Reg Ellis • To Sergeant Baskerville from Carol Berry
11/1/89	K. Dunlop	323	Letter • April 29/87 to Acting Chief Shoveller from R. Brady • re: NRP Internal Investigation - Reg Ellis
11/1/89	K. Dunlop	324	Letter • May 1/87 to Acting Deputy Chief, Operations, James Moody from Newburgh • re: Complaint of Ron Brady
11/1/89	K. Dunlop	325	Letter• May 28/87 to Acting Chief Shoveller from R. Brady • re: Reg Ellis
11/1/89	K. Dunlop	326	3 complaint Notification • June 5/87 to Newburgh, Rattray, VanderMeer from Acting Staff Superintendent Turnbull• re: Improper Conduct
11/1/89	K. Dunlop	327	*Globe and Mail* article • March 9/89 by Peter Moon • re: "NRP Force" **(for identification)** • Exhibit #327 • was identified by Peter Moon on December 11/89
11/14/89	R. Collins	328	Cover for Crown Brief • re: *Reintaler*

DATE	FILED BY	EX #	DESCRIPTION
11/14/89	R. Collins	329	Routine Order 111/87 • July 6/87 to Melinko from Acting Chief Parkhouse • re: Transfer from Fraud Unit to Operations
11/14/89	R. Collins	330A	Excerpt from Nation Firearms Manual
11/14/89	R. Collins	330B	Top Break Pistol (photocopied picture)
11/14/89	R. Collins	330C	Hammerless Pistol (photocopied picture)
11/15/89	R. Collins	331	Excerpt from National Firearms Manual • re: Museums
11/20/89	W.E.C. Colter	332A	Excerpt from Mike Miljus Notebook • July 30/87
11/20/89	W.E.C. Colter	332B	Excerpt from Mike Miljus Notebook • April 12/88
11/20/89	D. Pickering	333	Excerpt from Gun Traders Guide • Ninth Edition, completely revised
11/20/89	D. Pickering	334	Excerpt from Flaydermans Guide to Antique American Firearms • Third Edition
11/20/89	D. Pickering	335	Excerpt from National Firearms Manual • Registration of Restricted Weapons
11/20/89	D. Pickering	336	Confidential Report to Sergeant Melinko • re: Firearms Registration
11/21/89	K. Dunlop	337	Request for Tracing Firearms
11/21/89	K. Dunlop	338	Memorandum • June 25/87 to Acting Deputy Chief Moody from Sergeant Melinko • re: Meeting with W. Wolski, Crown counsel Attorney General's office
11/22/89	K. Dunlop	339	Original file relating to Gun N°. 273
11/22/89	W.E.C. Colter	340	*Regina vs Marvin* • re: Henderson
11/22/89	W.A. Kelly	341	Photograph of screwdriver used to open closet 374
11/28/89	W.A. Kelly	342	Memorandum • June 8/87 to Parkhouse from Lee Rattray • re: Request from Deputy Chief Parkhouse

DATE	FILED BY	EX #	DESCRIPTION
11/30/89	D. Pickering	343	Memorandum • August 25/87 to Acting Deputy Chief Moody from Sergeant VanderMeer • re: Gayder, the OPC Investigation
11/30/89	D. Pickering	344	OPC Schultz Report • September 1982
12/6/89	K. Dunlop	345A	Memorandum • April 25/88 to Staff Superintendent Moody from Chief Shoveller • re: Preliminary Inquiry - Reg Ellis
12/6/89	K. Dunlop	345B	Memorandum • April 28/88 to Chief Shoveller from Staff Superintendent Moody • re: Preliminary Inquiry - Reg Ellis
12/6/89	K. Dunlop	346	Letter • February 23/87 to Acting Deputy Chief Shoveller from Staff Superintendent Moody • re: C. complaint
12/6/89	K. Dunlop	347	*Globe and Mail* articles • November 24/87 by Peter Moon • Article: "Niagara Regional Police traded and sold seized guns, report says" • (This can also be found in Brief, Exhibit #307A - Tab 266)
01/8/90	B. Matheson	348	Charge sheet for Typer with attached Endorsement • June 18/87 by J.A. Pringle
01/11/90	R. Collins	349	Denise Taylor Notes of February 1/88 (**Sealed Document, counsel only**)
06/20/90	P. Shoniker	349A	Denise Taylor Notes of February 1/88 • (highlighted areas by Denise Taylor being terminology or language which was not hers)
01/16/90	F. Fedorsen	350	1) Letter • January 10/90 to Ron Collins from Deputy Chief Kelly • re: Baskerville Complaint • 2) Letter • January 10/90 to Ron Collins from Deputy Chief Kelly • re: P. Barr complaint

DATE	FILED BY	EX #	DESCRIPTION
01/16/90	F. Fedorsen	351	Memorandum • December 11/87 to Chief Shoveller from Acting Staff Superintendent Franko • re: Inquiries - Mansion House Hotel
01/16/90	F. Fedorsen	352	1) Letter • February 25/88 to Chief Shoveller from R. McGee • re: VanderMeer - 2 *Police Act* charges • 2) Letter • March 8/88 to R. McGee from Chief Shoveller • re: Reply to McGee's letter
01/29/90	R. Collins	353A	Memorandum • August 27/86 to John Takach from Shaun MacGrath • re: Niagara Regional Board of Commissioners of Police
01/29/90	R. Collins	353B	Memorandum • September 15/86 to Memorandum to File from John McBeth • re: Meeting with Niagara Regional Commissioners of Police
01/29/90	R. Collins	353C	1) Memorandum • September 17/86 to John Takach from Shaun MacGrath • re: Niagara Regional Police Board of Commissioners of Police • 2) Letter • September 12/86 to John McBeth from William Dickson • re: Meeting of September 11/86
01/23/90	D. Pickering	354	Press release • May 28/86 by Denise Taylor • "Commission conducting business behind closed doors"
01/29/90	W.A. Kelly	355	December 4/86 • Minutes of Police Board of Commissioners meeting
01/29/90	W.A. Kelly	355A	Press Release by Police Board of Commissioners • re: Results of OPP Report
01/25/90	K. Dunlop	356	Complaints against police by Ron Brady • April 26/87 • and Complaint Report, re: Special Investigation Unit
01/25/90	K. Dunlop	357	Reg Ellis will-say taken by Sergeant Franko

DATE	FILED BY	EX #	DESCRIPTION
01/31/90	R. Collins	358	BRIEF • Complaint N°. 2 • vol. II • Allegation of Misconduct against Staff Sergeant Newburgh, Sergeant VanderMeer, Rattray • April 26/87
02/1/90	P. Barr	359A	BRIEF • Ellis Preliminary Hearing transcript
02/1/90	P. Barr	359B	BRIEF • Judgement of Ellis Preliminary Hearing
02/5/90	R. Collins	360	Melinko's hand-written request for tracing firearms for 26 Welland Guns
02/8/90	W.A. Kelly	361	Chart • association between X, Y, Z and C.
02/12/90	R. Collins	362	6 Photographs of boat owned by Ron Bevan • purchased in 1982 (photocopies)
02/12/90	R. Collins	363	1) Radio telephone Operator's Certificate to Ronald Bevan • November 3/82 • 2) Ron Bevan's Radio License Statement due March 31/83 • 3) Cheque • March 24/83 to Receiver General from Bevan • re: Radio License Payment
02/12/90	R. Collins	364	Declaration • February 25/82 sold to Ron Bevan by Brian Bevan • re: 1979 Toyota Corolla
02/12/90	R. Collins	365	Written Preamble prepared by Ron Bevan for interview with Moody and Newburgh
02/12/90	W.A. Kelly	366	Sergeant VanderMeer's notes of interview with Russell and Alexander • August 24/87
02/21/90	D. Pickering	367	Memorandum • April 16/87 to Acting Deputy Chief Moody from Sergeant VanderMeer • re: Board of Police Commissioners Meeting of April 16/87
02/22/90	D. Pickering	368	Flow Chart of Property and Vehicle Disposition

DATE	FILED BY	EX #	DESCRIPTION
06/4/90	R. Miller	369	Newspaper Article • October 15/88 • "Abandon Police Inquiry: Dick Regional Chairman say's it's 'an ego trip' for Taylor"
02/22/90	B. Matheson	370	Typed will-say of M. Miljus • April 8/87 also hand-written notes of Sergeant VanderMeer (original)
02/22/90	B. Matheson	371	Original will-say of M. Miljus • April 8/87 written by M. Miljus and VanderMeer and signed by Miljus and VanderMeer
02/26/90	B. Matheson	372	Memorandum • December 15/83 to Inspector Gittings from Sergeant VanderMeer • re: C. and Sergeant Edward Typer
02/26/90	B. Matheson	373	Interview December 16/83 of John Cardillo by Sergeant VanderMeer and Constable Peressotti
02/26/90	B. Matheson	374	Arrest Report • December 16/83 for C. • re: 4 Charges
02/26/90	B. Matheson	375	General Occurrence Report N°. 69796 • June 28/83 • re: Vincent Paite and C. Occurrence • Information - Dumping Fill
02/26/90	L. Rattray	376	1) Memorandum • May 11/88 to Acting Staff Sergeant Mooney from Inspector Lampman • re: P.C. 6700: Lee Rattray • 2) Order N°. 18/88 • Transfer of Lee Rat-tray to Beat-Officer • 3) Order N°. 17/88 • Divisional Standing Order • Transfers effective May 8/88
02/26/90	L. Rattray	377	Personal Evaluation of Lee Rattray • September 24/87 by Sergeant VanderMeer
02/27/90	L. Rattray	378	Letter • June 17/87 to Acting Deputy Chief Moody from Sergeant VanderMeer • re: Meeting, Attorney General's Department • June 16/87

DATE	FILED BY	EX #	DESCRIPTION
03/1/90	L. Rattray	379	Letter • December 22/87 to Acting Deputy Chief Moody from Acting Staff Sergeant VanderMeer • re: Chambers, C., VanderMeer investigation
03/1/90	L. Rattray	380	Memorandum • February 20/87 to Acting Deputy Chief Moody from Staff Sergeant Newburgh • re: Request for Reports
03/1/90	L. Rattray	381	Letter • April 29/87 to Acting Chief Shoveller from R. Brady • re: NRP Internal Investigation and re: Reg Ellis
05/23/90	F. Fedorsen	381A	1) Letter • April 29/87 to Acting Chief Shoveller from R. Brady • re: NRP Internal Investigation and re: Reg Ellis **(with written comments)** • 2) Letter • May 28/87 to Acting Chief Shoveller from R. Brady • re: Reg Ellis • 3) Letter • June 1/87 to R. Brady from Acting Chief Shoveller • re: Reply to May 28/87 letter
03/1/90	L. Rattray	382	Letter • October 30/87 to Acting Deputy Chief Moody from Acting Staff Sergeant VanderMeer • re: Meeting with Board of Commissioners of Police counsel • October 29/87
03/1/90	L. Rattray	383	Letter • December 18/87 to Deputy Chief Moody from Acting Staff Sergeant VanderMeer • re: Possible Allegations against Sergeant Frank of obstructing justice

DATE	FILED BY	EX #	DESCRIPTION
03/1/90	L. Rattray	383A	1) Memorandum • January 12/88 to Chief Shoveller from Acting Deputy Chief Moody • re: Memorandums against Sergeant Franko • 2) Letter • December 23/87 to Acting Deputy Chief Moody from Acting Staff Sergeant VanderMeer • re: Complaint of Neglect of Duty against Acting Staff Sergeant Franko under *Police Act* **(for identification)** • Exhibit #383A • Letter 2 was identified by Chief Shoveller on May 9/90
04/30/90	R. Collins	384	Brief • Statements of Janice Pay • 1) Commission Interview • 2) Statement to NRPF Association
04/30/90	F. Fedorsen	385	Sketch of Executive offices of NRPF indicating location of Mrs. Pay's desk with subsequent amendments by Mrs. Pay (Exhibit #385 was edited by Maxine Knox and Billie Hockey on May 1/90)
05/2/90	K. Dunlop	386	Memorandum • November 5/87 to Chief Shoveller from Acting Staff Sergeant VanderMeer • re: J. Gayder and Alexander Ross Firearms
05/2/90	K. Dunlop	387	Memorandum • August 21/87 to Acting Deputy Chief Moody from Sergeant VanderMeer • re: Interview with Inspector Jones, OPP
05/3/90	K. Dunlop	388	Hearing under *Police Act* • December 2/88 • in matter of Cornelis VanderMeer • reasons for sentence on pages 33 - 35
05/3/90	K. Dunlop	389	1) Memorandum • October 23/84 to Inspector Gittings from Sergeant VanderMeer • re: C. Complaint • 2) Memorandum • October 25/84 to Sergeant VanderMeer from Acting Deputy Chief Shoveller • re: C. Complaint

DATE	FILED BY	EX #	DESCRIPTION
05/3/90	K. Dunlop	390	Memorandum • January 3/85 to Superintendent Leigh from Sergeant VanderMeer • re: Release of Eugene Trasewich
05/3/90	K. Dunlop	391	Memorandum • June 12/87 to Acting Chief Shoveller from Acting Superintendent Kelly • re: Transfer of Sergeant Cor VanderMeer, P.C. N°. 8119
05/7/90	W.A. Kelly	392	List of Inspectors
05/9/90	W.A. Kelly	393A	Letter • March 27/87 • Delivered to Acting Chief Shoveller by Superintendent McMaster • re: NRPF providing list of firearms
05/9/90	W.A. Kelly	393B	Copy of Gayder Gun Registration • received by Acting Chief Shoveller from S. McMaster • March 27/87
05/14/90	W.A. Kelly	394	1) Letter • February 25/87 to Ian Roland from William Dunlop • re: James Gayder - *Police Act* charges • 2) Memorandum • February 25/87 • to File from Ian Roland • re: James Gayder - *Police Act* charges • 3) Memorandum • April 21/87 to File from Ian Roland • re: James Gayder
05/14/90	W.A. Kelly	395	Board of Police Commissioners Motion that William Dunlop be retained • re: *Police Act* charges against Gayder
05/14/90	W.A. Kelly	396	Synopsis of Evidence • re: Gayder - *Police Act* charges
05/14/90	W.A. Kelly	397	Ringed black binder • re: Gayder - *Police Act* charges (another version of 55 B)
05/15/90	R. Brady	398	Report • January 10/87 to Deputy Chief Shoveller from Sergeant VanderMeer • re: Possible Misuse of NRPF Funds

DATE	FILED BY	EX #	DESCRIPTION
05/16/90	P. Shoniker	399	1) Report • January 23/87 to Denise Taylor from Chief Gayder • re: Bell Correspondence • 2) Letter • January 23/87 to Andrew Bell from Chief Gayder • re: Transfer of Sergeant VanderMeer • 3) Letter • January 19/87 to Chief Gayder from Andrew Bell • re: Sergeant Cornelis VanderMeer
05/17/90	P. Shoniker	400	Minutes of Police Board of Commissioners Meeting • April 29/87 • Minutes C.154 (for **identification**) • Exhibit #400 was identified by Denise Taylor on June 20/90
08/7/90	P. Shoniker	400A	Minutes of Police Board of Commissioners Meeting • April 29/87 • Minutes C.154 (corrected version)
05/23/90	F. Fedorsen	401A	Minutes of Confidential Meeting of Police Board of Commissioners • August 7/86 • re: Minutes C.160
05/23/90	F. Fedorsen	401B	Letter • August 29/86 to William Dickson, Chairman from Chief Gayder • re: Alleged that Dr. Lorenzen Firearms Audit NRP
06/20/90	P. Shoniker	401C	Letter • August 29/86 • C.144/86 to Wilbert Dick from Chief Gayder • re: Allegations - Dr. Lorenzen
05/22/90	K. Dunlop	402A	Memorandum • January 16/84 to Chief Gayder from Deputy Chief Walsh • re: C. Complaint against VanderMeer
05/22/90	K. Dunlop	402B	Memorandum • October 2/84 to Superintendent Shoveller from Deputy Chief Walsh • re: C. Complaint against VanderMeer
05/22/90	K. Dunlop	402C	Memorandum • October 12/84 to Deputy Chief Walsh from Staff Sergeant Chambers • re: C. Complaint against VanderMeer

DATE	FILED BY	EX #	DESCRIPTION
05/22/90	K. Dunlop	403A	Memorandum • October 30/84 to Inspector from Hilary Roy • re: Release of File Information
05/22/90	K. Dunlop	403B	Ledger File sheet from page 79 from Brief "Further Materials Relating to Sergeant VanderMeer"
05/22/90	K. Dunlop	403C	Ledger File Sheet from page 80 from Brief "Further Materials Relating to Sergeant VanderMeer"
05/22/90	K. Dunlop	403D	Memorandum • October 30/85 to Deputy Chief Shoveller from Inspector Kopinak • re: Release of file info and photographs
05/23/90	K. Dunlop	404	Memorandum • October 10/85 to Chief Gayder from Staff Inspector Chandler • re: *Globe and Mail*
05/23/90	F. Fedorsen	405	5 Letters Correspondence • re: Sergeant VanderMeer - *Police Act* Charges • 1) Letter • January 20/88 to Sergeant Melinko from R. McGee, Q.C. • re: Sergeant VanderMeer • 2) Letter • January 21/88 to R. McGee from Inspector Jones • re: Sergeant VanderMeer • 3) Letter • February 2/88 to Denise Taylor from Chief Shoveller • re: *Police Act* Charges • 4) Letter • February 25/88 to Chief Shoveller from R. McGee, Q.C. • 5) Letter • March 8/88 to R. McGee, Q.C. from Chief Shoveller • re: *Police Act* charges - Sergeant VanderMeer
05/23/90	F. Fedorsen	406	Synopsis of Moody's notebooks as it relates to meeting of VanderMeer and Chief Shoveller
05/23/90	R. Collins	407	BRIEF • Niagara Regional Police Force Unlawfully Intercepted The Private Communications of Mark Tiffany DeMarco
05/30/90	K. Dunlop	408	Letter • received September 19/85 to: Stephen Sherriff from G.H. plus envelope

DATE	FILED BY	EX #	DESCRIPTION
05/30/90	K. Dunlop	409	CPIC Message • May 30/90 • RCMP Criminal Records of C.
05/30/90	K. Dunlop	410	Supplementary Report • July 15/85 • Occurrence, Counselling Murder • re: C.
05/31/90	P. Shoniker	411A	BRIEF • Stephen Sherriff Information Brief • vol. I (page 1 - 290)
05/31/90	P. Shoniker	411B	BRIEF • Stephen Sherriff Information Brief • vol. II (page 291 - 570)
05/31/90	W.A. Kelly	412	Stephen Sherriff Notes • re: Niagara Regional Police Inquiry
05/31/90	W.E.C. Colter	413A	Order of Authorization • re: Wiretap by Honourable Justice Holland • March 21/85 • **(sealed document, signed by Commissioner)**
06/5/90	W.A. Kelly	413B	Wiretap Tape of conversation between Stephen Sherriff and G.H **(sealed document, signed by Commissioner)**
05/31/90	D. Pickering	414	3 Letters of Correspondence plus newspaper article • April 18/87 • between Pickering and Richardson • April 23/90, November 1/89, October 17/89
05/31/90	R. Collins	415	BRIEF • Neil Taylor and Donald Rideout Incident • December 24/86
06/5/90	W.A. Kelly	416	Package of material received by Denise Taylor from Mal Woodhouse • Aug. 29/86 regarding request for Police Inquiry
06/5/90	W.A. Kelly	417	Denise Taylor Notes • November 2/86 • re: Meeting with John Crossingham
06/13/90	R. Collins	418A	Black's Opinion • re: James Gayder
06/13/90	R. Collins	418B	Greenspan/Humphrey's Opinion • re: James Gayder
06/13/90	R. Collins	418C	E. Ratushny's Opinion • re: James Gayder

DATE	FILED BY	EX #	DESCRIPTION
06/13/90	R. Collins	418D	Memo to file • Niagara Regional Board of Commissioners of Police from Frederick Fedorsen • November 4/87 • re: Telephone Conversation with Humphrey
06/12/90	W.A. Kelly	419	November 5/87 • Meeting of Niagara Regional Board of Commissioners Police
06/27/90	R. Collins	420	November 15/87 • Confidential Meeting of Niagara Regional Board of Commissioners
06/12/90	W.A. Kelly	421	Letter • December 10/87 to Honourable Joan Smith from E. Ratushny • re: Judicial Inquiry into allegations of improprieties related to NRPF
06/13/90	D. Pickering	422	Special Confidential Meeting • August 18/88 of Niagara Regional Board of Commissioners
08/13/90	P. Shoniker	423	November 5/87 • Confidential Meeting of Niagara Regional Board of Commissioners
06/14/90	R. Collins	424	Denise Taylors copy of Wolski's • October 12/87 report and her notes relating to this
06/19/90	P. Shoniker	425	Definitions of Organized Crime
06/20/90	P. Shoniker	426	*Niagara Falls Review* article • November 26/87 • "Gayder for Police Probe - Chief has mixed emotions about probe - says it will be good in long run"
06/20/90	P. Shoniker	427	Letter • August 26/87 to Niagara Regional Board of Commissioners of Police from Justice Barr • re: Sergeant Baskerville
06/20/90	P. Shoniker	428A	"...indicating Alexander Ross' telephone number for 1982."
06/20/90	P. Shoniker	428B	"...indicating Alexander Ross' telephone number for 1983."

DATE	FILED BY	EX #	DESCRIPTION
06/20/90	P. Shoniker	428C	"...indicating Alexander Ross' telephone number for 1984."
06/20/90	P. Shoniker	428D	"...indicating Alexander Ross' telephone number for 1985."
06/20/90	P. Shoniker	429A	Letter • September 3/87 to Denise Taylor from Harry Daniel • re: Congratulations re Shoveller
06/20/90	P. Shoniker	429B	Thank You Note • August 25/87 from family of Deceased
06/20/90	P. Shoniker	429C	Letter • July 29/87 to Denise Taylor • re: Thanking her for assistance
06/20/90	P. Shoniker	430A	Schedule of Police Association Contracts • 1970 - 1990
06/20/90	P. Shoniker	430B	1987 Police Arbitration Submissions by Niagara Regional Police Association
06/20/90	P. Shoniker	431	The Report of the Race Relations and Policing Task Force
06/20/90	P. Shoniker	432	Papers prepared by the Honourable Gordon Killeen for Seminars of the Municipal Police Authorities • 1982, 1985, 1986, 1987
06/20/90	P. Shoniker	433	Presentation by Irv Alexander, Advisor, OPC at Training Seminar in 1986
06/20/90	W.A. Kelly	434	Mrs. Taylor's copy of Confidential Report of NRPF Internal Inquiry • 1987 • plus pages 91-93 (Exhibit #56)
06/25/90	P. Shoniker	435A	October 30/87 • Application for position of Deputy Chief of Police of a Staff Superintendent **(sealed document)**
06/25/90	P. Shoniker	435B	October 30/87 • Application for position of Deputy Chief of Police of a Staff Superintendent **(sealed document)**
06/25/90	P. Shoniker	435C	November 6/87 • Application for position of Deputy Chief of Police of a Superintendent **(sealed document)**

DATE	FILED BY	EX #	DESCRIPTION
06/25/90	P. Shoniker	435D	November 12/87 • Application for position of Deputy Chief of Police of an Inspector **(sealed document)**
06/25/90	P. Shoniker	435E	November 4/87 • Application for position of Deputy Chief of Police of an Inspector **(sealed document)**
06/25/90	P. Shoniker	435F	November 23/87 • Application for position of Deputy Chief of Police of an Inspector **(sealed document)**
06/25/90	P. Shoniker	435G	November 3/87 • Application for position of Deputy Chief of Police of an Inspector **(sealed document)**
06/25/90	P. Shoniker	435H	November 10/87 • Application for position of Deputy Chief of Police of an Acting Superintendent **(sealed document)**
06/25/90	P. Shoniker	435I	List of applicants that applied for position of Deputy Chief of Police **(sealed document)**
06/25/90	L. Rattray	436	Document regarding Rattray's availability at Hearings and during adjournments for preparation
06/25/90	P. Shoniker	437	Excerpts from Statistics Canada Canadian Centre for Justice Statistics pertaining to "Offenses released Otherwise"
06/26/90	W.A. Kelly	438	*St. Catharines Standard* article • January 7/80 • "Regional Force honoured by B'nai B'rith - Deputy urges Police Community involvement"
06/26/90	W.A. Kelly	439	*St. Catharines Standard* article • January 27/83 • "Appeal based on Rights Charter"
06/26/90	W.A. Kelly	440	*Globe and Mail* article • October 18/85 • "Friend in Need? Niagara Police investigation whether detective helped man get records illegally."

DATE	FILED BY	EX #	DESCRIPTION
06/26/90	P. Shoniker	441	July 30/84 • Statement of the Honourable George Taylor, Q.C., Solicitor General • re: Investigation into NRPF re Joint Investigation by OPC and OPP
06/27/90	R. Collins	442	BRIEF • Ted Johnson/Robert Richardson **(For Commission only; sealed document)**
06/27/90	R. Collins	443A	BRIEF • Other Witnesses for the Internal Investigation
06/27/90	R. Collins	443B	BRIEF • Other Witnesses for the Internal Investigation • Part B
08/08/90	P. Shoniker	444	Declaration of VanderMeer Regarding Authorization of Wiretap
08/13/90	R. Collins	445A	BRIEF • OPC Internal Investigation of NRPF • vol. I (page 1 - 503)
08/13/90	R. Collins	445B	BRIEF • OPC Internal Investigation of NRPF • vol. II (page 504 - 799)
08/13/90	R. Collins	445C	BRIEF • OPC Internal Investigation of NRPF • vol. III (page 800 - 1145)
08/13/90	R. Collins	445D	BRIEF • OPC Internal Investigation of NRPF • vol. IV (page 1146 - 1503)
08/13/90	R. Collins	445E	BRIEF • OPC Internal Investigation of NRPF • vol. V (page 1504 - 1659)
08/13/90	R. Collins	446A	February 15/83 • *St. Catharines Standard* "Civil Rights on the Streets - do they apply to the young - Kevin McMahan."
08/14/90	R. Collins	446B	March 19/83 • *St. Catharines Standard* "Pre-trial events denied woman her day in court" "Policemen want justice too!"
08/14/90	R. Collins	446C	June 15/83 • *St. Catharines Standard* "Police Board stifling probe"
08/14/90	R. Collins	446D	June 29/83 • *St. Catharines Standard* "Their eyes are closed to abuse"

DATE	FILED BY	EX #	DESCRIPTION
08/14/90	R. Collins	446E	October 6/83 • *St. Catharines Standard* "Police beat, tortured clients, lawyer claims"
08/14/90	R. Collins	446F	October 11/83 • *St. Catharines Standard* "Swart urges police probe"
08/14/90	R. Collins	446G	October 13/83 • *St. Catharines Standard* "Internal Review begins into police brutality allegations"
08/14/90	R. Collins	446H	October 14/83 • *St. Catharines Standard* "Niagara Regional Police - Province orders probe"
08/13/90	R. Collins	447	Robert Russell's • Friday, July 13/84 - 3:15 notes of phone conversation with Deputy Chief Bud Walsh
08/13/90	P. Shoniker	448	BRIEF N°. 10 • Other Gun Witnesses
08/14/90	R. Collins	449	Photocopy of Irv Alexander's notes of Tuesday, March 6/84 • listing items to be discussed with Gayder
08/15/90	W.A. Kelly	450A	Memorandum • February 3/88 to Acting Inspector Healey from Sergeant Peressotti • re: C.
08/15/90	W.A. Kelly	450B	Memorandum • February 4/88 to Inspector Chambers from Deputy Chief Kelly • re: C. et al
08/15/90	W.A. Kelly	450C	Memorandum • February 5/88 to Deputy Chief Kelly from Inspector Chambers • re: C. et al
10/23/90	R. Collins	451	Daily Log and Telephone Conversation • April 21/84 • Fulton to Beamer
10/23/90	R. Collins	452	Daily Log and Telephone Conversation • April 21/84 • Fulton to Sam
10/24/90	R. Collins	453	Telephone Conversation • April 21/84 • Fulton to Toth
10/24/90	R. Collins	454	Bi-weekly report of Doug Wilkinson • April 25/84

DATE	FILED BY	EX #	DESCRIPTION
10/29/90	R. Collins	455	Statement of D.B. given to Cornelis VanderMeer • September 2/89
10/30/90	R. Collins	455A	Amended copy of D.B. given to Cornelis VanderMeer • September 2/89
11/14/90	K. Dunlop	455B	Original hand-written statement of D.B. given to Cornelis VanderMeer
10/29/90	R. Collins	456	RCMP file on Sergeant Ryan
10/29/90	R. Collins	457	Brief of allegations by D.B. to Cor VanderMeer • September 2/89 • Appendix A.
10/30/90	R. Collins	458	Royal Canadian Mounted Police receipt of D.B. regarding Ed Lake.
10/31/90	R. Collins	459	Brief of allegations by D.B. to Cor VanderMeer • September 2/89
11/7/90	B. Jones	460	Copy of permit to convey firearms • March 28/85 • 12:00 p.m. - 5:00 p.m.
11/7/90	R. Collins	461	Package of 65 pages, provided to McAuliffe by D.B. (with the exception of pages 2-9)
11/8/90	K. Dunlop	462	Letter from *Hamilton Spectator* and copies of gun registrations.
11/8/90	K. Dunlop	463	Memorandum to R.A. Kisur from Staff Sergeant MacLeod • December 21/88
11/13/90	R. Collins	464	Brief • Statements as a result of testimony of D.B.
11/13/90	R. Collins	465	Personnel Interview report of John Prentice • February 23/76
11/13/90	P. Shoniker	466	3 Names from Shoniker, and 3 from Berry, written on a paper towel
11/13/90	P. Shoniker	466A	3 Names from Dunlop, 2 identified by Berry, written on a yellow 'post-it'.
11/14/90	R. Collins	467	Staff Sergeant McClaren's investigation file in relationship to documents released to McAuliffe in 1984.

DATE	FILED BY	EX #	DESCRIPTION
11/14/90	K. Dunlop	468	Interview of Ken Davidson by Rocky Cleveland • May 1/90
11/14/90	R. Collins	469	Investigation of Allegation by D.B. to Cor VanderMeer • Appendix B
11/20/90	R. Collins	470	Statement by Reg Ellis • May 1/87
11/20/90	R. Collins	471	Brief • Interviews related to retired Staff Sergeant Robert Richardson and the Boat Conspiracy
11/20/90	R. Collins	472	Brief • 1986 Transfer of Inspector Peter Kelly as per order 149/86
11/20/90	R. Collins	473	Brief • Surveillance on Murray Gayder
11/20/90	R. Collins	474	Brief • Alleged wrongdoing • vol. III • Allan Marvin, criminal charges
reserved	D. Pickering	475	Brief • Gerry McAuliffe Broadcast
reserved	R. Collins	476	Routine Order 183/89
01/17/91	P. Shoniker	477A	Letter • December 1/89 to Tony Kelly from Ed Ratushny • re: Workshop, November 6-8/89
01/17/91	P. Shoniker	477B	Letter • February 7/90 to Ed Ratushny from D. Pickering • re: Niagara Regional Police Inquiry
01/17/91	P. Shoniker	477C	Letter • April 2/90 to Ron Brady from Ed Ratushny • re: Colter Inquiry
01/17/91	P. Shoniker	477D	Letter • April 5/90 to D. Pickering from: Ed Ratushny • re: Colter Inquiry
01/17/91	P. Shoniker	477E	2 Letters • September 19, 1990 to Tony Kelly from Ed Ratushny
01/17/91	P. Shoniker	477F	Letter • December 10/90 to Ron Collins from Ed Ratushny
06/27/91	W.A. Kelly	1A	Fox Memorandum • September 27/89
06/27/91	W.A. Kelly	1B	Additional Materials relating to Fox Memorandum
06/27/91	W.A. Kelly	2	Correspondence from October 1990 to May 15/91

DATE	FILED BY	EX #	DESCRIPTION
06/27/91	W.A. Kelly	3	Interview of Stephen Sherriff • January 26/90
↑	↑	↑	**The above four exhibits were filed *in camera* in connection with Mr. Rowell's motion**
07/8/91	P. Shoniker	478	Letter • May 28/90 to P. Shoniker from W.A. Kelly
07/8/91	F. Fedorsen	479	Letter • June 12/91 to Justice W.E.C. Colter from P.J. Kelly
07/8/91	F. Fedorsen	480	Letter • July 2/90 to W.A. Kelly • re: Confirmation of June 18/91 meeting • from F.S. Fedorsen
07/8/91	F. Fedorsen	481	Letter • June 6/91 to R.D. Collins from F.S. Fedorsen
07/8/91	F. Fedorsen	482	Letter • (FAX) • July 5/91 to F.S. Fedorsen • re: Motion of July 2/91 from R.D. Collins
07/8/91	R. Collins	483	Letter • June 19/91 to Justice Colter from P. Shoniker
07/8/91	P. Shoniker	484	Brief • Requests for Information Interviews from Niagara Regional Board of Commissioners
07/8/91	P. Shoniker	485	Letter • April 22/89 to W.A. Kelly from P. Shoniker
07/8/91	P. Kelly	486	Notice of Motion • July 2/91
07/8/91	P. Shoniker	487	Letter • September 1/88 to W.A. Kelly from F.S. Fedorsen
07/8/91	P. Shoniker	488	Letter • July 30/89 to W.A. Kelly from P. Shoniker
07/8/91	P. Shoniker	489	Letter • September 26/89 to P. Shoniker from W.A. Kelly
07/8/91	P. Shoniker	490	Letter • September 28/89 to W.A. Kelly from P.A. Shoniker
07/8/91	P. Shoniker	491	Reserved by P. Shoniker • Letter of March 25/91 • Counsel to Shoniker

DATE	FILED BY	EX #	DESCRIPTION
07/8/91	P. Shoniker	492	Letter • March 28/91 to W.A. Kelly from P.A. Shoniker
07/9/91	R. Collins	493	Brief • Documentation Concerning requests for Board Tapes
07/9/91	R. Collins	494	Letter • July 26/89 to All Counsel from R.D. Collins
07/9/91	R. Collins	495	**reserved** • Letter • June 6/91 to Commissioner Colter from P.A. Shoniker
07/9/91	R. Collins	496	**reserved** • Letter • June 7/91 to Commissioner Colter from P.A. Shoniker
07/11/91	R. Collins	497	Press Release of Niagara Regional Board of Commissioners of Police • February 1/90
07/11/91	R. Collins	498	Press Release of Niagara Regional Board of Commissioners of Police • February 22/90
07/11/91	R. Collins	499	Letter • May 16/91 to W.A. Kelly from P.A. Shoniker
07/17/91	R. Collins	500	**(sealed exhibit)** • re: Project Vino • September 25/85 • Memorandum from Detective Sergeant Joyce
05/4/92	W.A. Kelly	501	September 7/90 • Letter to The Honourable D. Peterson from Niagara Regional Board of Commissioners of Police signed by Mal Woodhouse
05/5/92	W.A. Kelly	502	April 25/90 • Letter to Commissioner Colter from Niagara Regional Board of Commissioners of Police signed by Denise Taylor
05/7/92	W.A. Kelly	503	Excerpt of August 23/90 • Special Confidential Minutes from Niagara Regional Board of Commissioners of Police Meeting (pp. 1 and 2)

DATE	FILED BY	EX #	DESCRIPTION
05/7/92	W.A. Kelly	504	Excerpt of Public Minutes from January 1/90 • Meeting of the Niagara Regional Board of Commissioners of Police (page 6)
05/7/92	W.A. Kelly	505	December 21/90 Letter from Niagara Regional Board of Commissioners of Police signed by Mal Woodhouse to The Honourable Bob Rae. Fax documentation for same and copy of Inquiry transcript • vol. 228
05/7/92	W.A. Kelly	506	April 25/91 Special Confidential Minutes from Niagara Regional Police Services Board Meeting
06/30/92	W.A. Kelly	507	**Sealed Exhibit** • Portion of Brief prepared by Commission Investigators • re: Norman Mook (statements) • Filed *in camera*

APPENDIX F
CONSULTANTS

Victor MacDonald	The Role of the Niagara Regional Board of Commissioners of Police
Environics Research	Public Confidence in the Niagara Regional Police Force
William Hull	Force - Media Relations
R.L. Jackson	Labour - Management Relationships in the Niagara Regional Police Force
McGinnis & Coutts	Hiring Practices and Promotion Processes
Jean-Paul Brodeur	Public Complaints against the Niagara Regional Police Force: Practices, Procedures, Policies
McGinnis & Coutts	Morale within the Niagara Regional Police Force
Richard Loreto	Organization of the Niagara Regional Police Force
Anthony Doob	Disclosure Workshop

APPENDIX G
INQUIRY STAFF

COMMISSION STAFF

Commissioner	The Honourable Mr. Justice W.E.C. Colter
Counsel	W.A. (Tony) Kelly, Q.C.
Associate Counsel	Ronald D. Collins
Coordinator	Inge Sardy
Administrator	Thomas B. Millar
Administrative Assistant	Eveline M. Bill
Librarian	Ishmael Doku
Support staff	Michele Sardy R. Eric Stine Elizabeth Sinclair Carol Brown Linda Dempsey Marilyn G. Wellington (St. Catharines) Judy Taylor (St. Catharines)
Ushers	Cy Cresswell (St. Catharines) Gwendolyn Hill (St. Catharines)
Registrars	Patricia W. Laurin (St. Catharines) Christine Stuart
Summation Clerks	Mary Stonehouse Robert Tilson

SECONDED STAFF

Police Advisors

Metropolitan Toronto Police Force

Staff Inspector Stanley Shillington
Staff Sergeant Rocky Cleveland
Staff Sergeant Winston Weatherbie
Staff Sergeant Robin Breen
Staff Sergeant Robert Ellis
Sergeant John Barbour
Sergeant Richard Baker
Detective Sergeant Donald Sangster
Detective Sergeant Robert Montrose

APPENDIX H
COUNSEL

Commission Counsel	W.A. (Tony) Kelly, Q.C. *Kelly, Affleck, Greene*
	Ronald D. Collins *Fasken Campbell Godfrey*
Adams, John	David A. Crowe *Sinclair, Crowe*
Barnes, William A.	Represented himself
Berry, Carole	Faye McWatt
CBC and Gerald McAuliffe	W. Ian Binnie, Q.C. *McCarthy & McCarthy*
	Clayton Ruby *Ruby & Edwardh*
	Daniel J. Henry G. Michael Hughes *CBC*
D.B.	Brian D. Jones
Deeton, Donald	Joseph Wright
Ellis, Reginald	Garth Roberts Dennis Covello *Pongray, Roberts*
Gayder, James A.	F. David Pickering Edward Kravcik *Reid, McNaughton*
	Ian J. Roland R. Stevenson R.R. Wells *Gowling & Strathy*
Hockey, Billie	Faye McWatt

Kelly, Peter	Represented himself
Lake, Edward	David Kerr *Chown & Cairns*
Langan, Richard	Brenda V. Sandulak
Marvin, Allan	J. Ronald Charlebois Guy Ungaro
McKinney, Joan	Represented herself
Melinko, Gerry	Faye McWatt
Miljus, Michael	Barry Matheson, Q.C. Michael Bonomi *Sullivan, Mahoney*
Moody, James	Faye McWatt
Moon, Peter *(Globe and Mail)*	P.M. Jacobsen *Paterson, MacDougall*
Newburgh, Joseph	Faye McWatt
Niagara Regional Police Association	R.N. Brady Robert Miller Ian Pearson *Bench & Keogh*
Niagara Regional Police Force	Peter M. Barr G.A. Leach *Barr, Giannotti*
	Dr. Edward Ratushny, Q.C. *University of Ottawa, General Counsel*
	Geoffrey P. Spurr *Daniel, Wilson*
	Todd Ducharme R. Stephen Menzies *Fedorsen, Shoniker*

Niagara Regional Police Services Board	Peter A. Shoniker Todd Ducharme *Fedorsen, Shoniker*
	Dr. Edward Ratushny, Q.C. *University of Ottawa, General Counsel*
	W.S.F. Ellis, Q.C. *Lampard, Ellis*
	W.R. McMurtry, Q.C. *Blaney, McMurtry, Stapells*
	Robert P. Armstrong, Q.C. Michael Penny *Tory, Tory, Deslauriers & Binnington*
Onich, George	Faye McWatt
	John Hamilton Bruce Shilton *Hamilton, Shilton*
OPP	Dennis W. Brown, Q.C. John Zarudny *Crown Law Office (Civil)*
OPC	Dennis W. Brown, Q.C. John Zarudny *Crown Law Office (Civil)*
Peressotti, Ronald	Represented himself
Rattray, Lee Frank	Represented himself
Ryan, Gerald	Charles Ryall *Ryall, Walker*

Shoveller, John	Fred S. Fedorsen Todd Ducharme R. Stephen Menzies *Fedorsen, Shoniker*
	Dr. Edward Ratushny, Q.C. *University of Ottawa,* *General Counsel*
	W.R. McMurtry, Q.C. *Blaney, McMurtry, Stapells*
Taylor, Denise	Roger D. Yachetti, Q.C. *Yachetti, Lanza & Restivo*
Typer, Edward	Barry Matheson, Q.C. *Sullivan, Mahoney*
VanderMeer, Cornelis	Frederick Rowell, Q.C. Karen Dunlop David Locke Robert B. McGee, Q.C.
	Anne-Marie Shaw *Hamilton, Shilton*

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INDEX OF RULINGS

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RULINGS

Ruling of June 27, 1988: Standing and Funding

This hearing was convened on June 27, 1988, at St. Catharines for the purpose of entertaining applications for standing, and to consider certain matters concerning the organization and procedures of future hearings.

Mr. Ratushny applied for standing on behalf of the Board of Police Commissioners and of the Chief Officer and of the Police Force. He filed a joint brief on behalf of himself as general counsel for the Board, the Chief and the Force, and, on behalf of Mr. Shoniker as counsel for the Board, Mr. Fedorsen, as counsel for the Chief, and Mr. Barr as counsel for the Force. He submitted that the Board, the Chief and the Force would, in general, probably have the same interests in most of the matters brought before the Inquiry, but that their separate roles and perspectives in providing police service required separate representation at times. He pointed out that whereas the Board lays down policy, the Chief is responsible for day-to-day operations of the Force, while the Force carries out the orders of the Chief. Further, the Force consists of a wider membership than the Niagara Region Police Association, since it includes the Senior Officers and two Deputy Chiefs, which the Association does not, so that, for the Senior Officers to be represented, representation for the Force is required. The Association should be represented, but its interest, being primarily in improvement of conditions of work and salary, and union solidarity, are good for the members but not always in the best interests of the image of the Force. Accordingly, he suggests that, on occasion, these roles might be in opposition, and in the interests of a full Inquiry, could only be properly presented by separate counsel. He also points out that within the Police Association, there is no representation for the dissident, but counsel for the Force can represent any minority views. I accept the submission that the Chief's interests are not invariably the same as those of the Board or of the Force, and I consider I must accept the statement of such an experienced and responsible counsel as Mr. Ratushny (who, as General counsel for all three parties, has knowledge of the matters to be heard by the Inquiry, about which I have yet to learn) that some resulting conflicts are likely to arise during the course of the hearings. I accordingly grant standing to the Board of Commissioners of Police, to the Chief, and to the Force. I assume that there would not be many instances when the interests of the Chief and the Force are so much in conflict with those of the Board that they would require separate representation, and that there would be even fewer occasions when the interests of the Chief and those of the Force would be in such conflict as to require separate representation. I also bear in mind that it is my intention to grant standing to the Niagara Region Police Association, and that that Association represents all of the nearly 700 members of the Force with the exception of approximately 27 Senior Officers and two Deputy Chiefs.

Mr. Fedorsen and Mr. Shoniker have been retained, in addition to Mr. Ratushny, to represent the Board and the Chief respectively. They state that they can see no problem of conflict in their respective representations, in spite of the fact that they practice law in partnership, and that, before being retained, they advised the Board of Commissioners that the Law Society has been consulted, and that the Society saw no conflict. This reinforces my assumption that instances of conflict would not be frequent, and when present, not very serious, so that the necessity of participation by four counsel, two representing the Board and one representing the Chief and one the Force, would be even less frequent. Mr. Shoniker advised that The Honourable John Wintermeyer has been retained by the Board as an additional Senior counsel throughout the Inquiry to advise on certain matters. Since the Board, in its wisdom, and with knowledge of the matters to come before the Inquiry, has seen the necessity of retaining separate counsel for the Board, the Chief and the Force, I do not consider I should deny them the right to appear when required, so long as those counsel ensure that there is no duplication of effort. As already indicated, I intend to grant full standing to the Niagara Region Police Association, and in considering whether counsel for the Force should participate in any phase of the Inquiry, it should be borne in mind by Force counsel that the counsel for the Police Association will presumably cover almost all of the matters affecting the Force.

Counsel for the various parties, including Inquiry counsel, will be expected to liaise with one another regarding the matters to be covered from time to time, and as to the role each will assume in examination and cross-examination, so that there will be no duplicative or unnecessary appearances. Accordingly, the participation of the Force and the Chief will be limited to those matters which will not be covered by other counsel. It is hoped that, with the co-operation of counsel, arguments over the application of such limitations may be kept to a minimum.

I have no hesitation in finding that the Niagara Region Police Association should be granted standing. Each of the 12 terms of reference affects the Association members directly or indirectly, and their co-operation and input is essential. Their interest in the matters under investigation requires representation. Standing is accordingly granted to the Niagara Region Police Association.

James A. Gayder was a Deputy Chief of the Force from its formation on January 1, 1971, until January 1, 1984, when he was appointed Chief Officer. On March 4, 1987, he resigned from the Force. He has been the target of a number of allegations of mismanagement and misconduct, which will be investigated by this Inquiry. He requires to be represented and is granted standing.

Cor VanderMeer is a Sergeant of the Force. He is the source of many of the allegations against Mr. Gayder, and was part of the police team carrying out an extensive internal investigation in 1987. He is the subject of a disciplinary charge as the result of his allegedly leaking to the media the report of that investigation. As an accuser, he has a direct and substantial interest in a number of the terms of reference, namely Numbers 2, 3, 7, 11 and 12. He requires separate representation and is granted standing, limited to matters, in which he was involved, arising under the above listed terms of reference. His counsel will be expected to liaise with other counsel to ascertain when his appearance may be required in relation to those matters.

The Ontario Police Commission and Ontario Provincial Police conducted investigations included in term of reference N°. 8. They thus have a direct and substantial interest in the Inquiry's investigation of those investigations, and will be granted standing. It is understood that they will be represented by a single counsel, who will liaise with other counsel as to the time when matters in relation to term of reference N°. 8 will be heard.

Mark DeMarco, Boris Petrovici and John Leonard, private citizens of the Region of Niagara, applied for status in person. It being apparent that their interest in the Inquiry pertained to private complaints they had made arising out of their unsatisfactory relationships with individual police officers, they were advised that they did not qualify for standing, but that they would be interviewed by Inquiry investigators and would be called as witnesses if their evidence appeared to be relevant to the Inquiry.

It was made clear to those present, and I reiterate it, that the above rulings are not cast in stone and are subject to revision on further application if circumstances change as a result of unforeseen events or of information not presently available.

All parties appearing, with the exception of the Ontario Police Commission and Ontario Provincial Police, applied for funding as well as standing. All claimed their presence at the hearings, or at the relevant parts thereof, was essential. They agreed that the Commission had no jurisdiction to grant funding, but asked that the Commission should request total funding from the Solicitor General or the Attorney General. Both the Board and the Police Association stated they had received assurance from the Solicitor General that "the government will pay" the costs of the parties. They were advised by me that the Attorney General, in response to a query by me, had written the Commission indicating that "there is no provision for funding parties appearing at the Inquiry and no authority for the Commissioner to authorize such. Normally, where funding is to be provided, provision for it is made in the Inquiry's Order in Council."

The parties, nevertheless, reiterated their request. The Board submitted that there is an indirect burden, financial and otherwise, imposed on the parties by co-operating with Commission counsel and staff in preparing for the hearings, and it is unfair that the entire addition financial burden for representation before the Inquiry should be borne by the citizens of the Niagara Region alone. It pointed out that many of the terms of reference transcend purely local concerns, and could lead to recommendations of general application to other regions of the Province. These submissions were adopted by counsel for the Force and Chief.

The Police Association pointed out that it had only 650 to 670 members, including civilians, and that to finance representation at hearings probably continuing for several months would impose so intolerable a burden on the members that they might decide they could not afford representation, or perhaps could finance only partial representation.

Counsel for Mr. Gayder and for Sergeant VanderMeer submitted that their clients simply did not have the funds to provide adequate representation.

In considering these applications, I have applied the following criteria:

(1) Has the applicant a direct and substantial interest in the proceedings, i.e. has he qualified for standing?

(2) Does he need to be represented separately from other parties having standing?

(3) In addition to his direct interest, is he likely to make such a substantial contribution to the Inquiry that his participation is necessary for a full and complete investigation?

(4) Has he demonstrated a committal to the interest he represents?

(5) Does he not have sufficient resources to generate the funds required to adequately represent that interest?

Applying these criteria to the Board, I find that it qualifies on all but the last, namely, sufficiency of resources. Obviously, the Region which funds the Board has the required resources. I appreciate Mr. Ratushny's submission, that it is unfair to expect the Region, through the Board, to fund a substantial part of this Inquiry, when the resulting recommendations may be of some use to the other regions. However, it was the Board which insisted on the institution of the Inquiry, in the face of governmental resistance, because of the particular situation in the Niagara Region, and it could be argued that it would be unfair to burden the rest of the Province with the cost of the Board's participation in addition to the very heavy costs inevitably attendant on the staffing of the Commission and the lengthy investigations of past investigations as demanded by the Board. In any event, sympathetic as I might be to the Board's position, I must face the reality of the Attorney General's advice to me that there is no provision for funding of any party. If I have any hope of persuading the Ministry to financially assist some of the impecunious parties, that hope would be put at great risk were I to recommend funding for not only the parties with limited financial resources, but also for the several counsel retained by the Board.

I accordingly decline to request the Department of the Attorney General to fund the Board, the Chief, or the Force, but I will not discourage such funding should these parties wish to make their own submissions to that Department.

I have no hesitation in recommending to the Attorney General that full funding be provided for Mr. Gayder and Sergeant VanderMeer for those parts of the hearings which consultation with Commission counsel determines to affect their interests. They satisfy all the criteria, and their participation is essential to the completeness of the Inquiry.

I will also recommend at least partial funding for the Police Association. They satisfy all the criteria, although they may have sufficient resources to provide a portion of their costs of participation in the hearings. I understand from their counsel that the membership numbers between 650 and 670 members, including civilian personnel, and that they have no fund available for Inquiry expenses. Costs of providing experienced counsel, plus other expenses for hearings that may well last several months, would inevitably result in a very heavy special assessment upon individual members. It does not seem fair to expect such contribution from members, the great majority, perhaps all, of whom have done nothing to cause the problems that have resulted in the appointment of this Commission of Inquiry. Nevertheless, their participation and co-operation is absolutely essential. As already pointed out, the Association has a substantial interest in virtually all of the phases of the Inquiry and its members can presumably provide more knowledge of the various matters comprising the terms of reference than can any other source. They will be expected to contribute their time and effort in providing this information to the Commission investigators. I accordingly will strongly recommend to the Attorney General and Solicitor General that funding, to the extent of at least two-thirds of their reasonable costs of representation at the Inquiry, be provided by the Department. Provision for taxation of those costs, or those of any other parties funded by the government, according to a tariff to be arranged, can be provided by the Commission.

Ruling of December 13, 1988: Disclosure of Mr. Gayder's interview

(*Orally*) This is an application by the Niagara Regional Board of Police Commissioners, for disclosure to it of a transcript of a lengthy interrogation of James A. Gayder, the former chief of the Niagara Regional Police Force, by investigators employed by this Commission of Inquiry.

At a procedural hearing held in the early days of the Inquiry, the Board, as well as the Force, the present chief, the Police Association as well as Mr. Gayder, and one Sergeant VanderMeer, were all granted standing to take part in these hearings as their interests might appear.

As a matter of courtesy and in the hope of expediting the hearings, Mr. Kelly, counsel for the Commission, has from the outset, provided all parties with transcripts or summaries of interviews between Commission investigators and prospective witnesses, as well as copies of previous investigations and inquiries, and supporting documents of the reports of those inquiries, to the extent of five or six large boxes of such material.

To the best of my knowledge, such complete disclosure has seldom, if ever, been given in similar proceedings.

It has been apparent from the outset that the Board of Police Commissioners has taken an adversary approach concerning a number of allegations of misconduct against ex-Chief Gayder. Upon Mr. Gayder being requested to arrange an interview with Commission investigators, counsel for Mr. Gayder refused to allow such an interview.

Following negotiations between Mr. Gayder's counsel and Commission counsel, it was finally agreed that such an interview would be granted, provided Commission counsel would give an undertaking, that the matters discussed in the interview would not be disclosed to anyone other than the investigators and Commission counsel.

Correspondence was exchanged between Mr. Kelly and the Board counsel about this, and I will refer to that later.

Mr. Kelly gave the undertaking as the only means of obtaining the interview, which he considered essential in order to allow the investigators to learn what Mr. Gayder alleged to be the origins of a number of weapons, allegedly found in the possession or control of Mr. Gayder; such possession, allegedly, being improper, as well as many other matters they wished to enquire about.

Without such information, the investigators would have had to wait until after Mr. Gayder gave evidence before they could check out his story, which would probably have resulted in a lengthy adjournment of the hearings while the alleged sources of the weapons were located and interviewed, and other matters revealed in his evidence were researched.

Following the undertaking being given, the investigators were allowed to interview Mr. Gayder. Although I don't believe I, as Commissioner, was intended to be excluded from knowing the contents of the interviews, nevertheless, so that there could be no question that the undertaking is being honoured, I have not asked for, nor received any knowledge of the contents of the interview.

Commission counsel has announced that he intends to call as witnesses, a number of persons who were mentioned by Mr. Gayder as sources of weapons, but that they will be testifying before Mr. Gayder is called in order to lay the proper groundwork for examination of Mr. Gayder, as well as, in fairness, letting him know the evidence against him, so that he will have an opportunity to answer it.

This application arose during the hearings, as a result of a question to one of the investigators who interviewed Mr. Gayder. Mr. Shoniker, counsel for the Board, asked him if he knew how a certain handgun came into the possession of the Police Force, and the investigator replied that he knew the answer, but the information would have to be obtained from another witness.

Mr. Kelly explained that this was because the information came from the interview with Mr. Gayder, and the investigator was bound by the undertaking not to disclose. Mr. Kelly undertook to call Mr. Gayder in due course, at which time the information could be elicited from him. Mr. Shoniker, however, stated he could not go on because without Mr. Gayder's statement, he was inhibited in fully cross-examining witnesses, and this application resulted.

I wish to thank Mr. Shoniker for supplying me with copies of the cases he cited, and for fairly providing precedents that might support the other side of the argument.

The first case cited by Mr. Shoniker, and he candidly admitted, it could be interpreted as being contrary to his interests, was *Slavutych v. Baker et al*, [1973], 38 C.R., at p. 306. A decision of the Supreme Court of Canada which sets out the principle of privilege.

It involved the use made by the Board of Governors of a University in dismissing one of its professors for allegedly false allegations against another professor, which allegations were set out in an assessment of the other professor, solicited by a department head from the professor who was eventually dismissed. It was requested that the reply be returned in an envelope marked "confidential." The assessment was, however, disclosed to an arbitration board, and the dismissal of the author of the assessment followed. The Court held that due to the confidential marking on the envelope, the letter was inadmissible in the arbitration proceedings. The Court adopted the fundamental conditions necessary for the establishment of privilege against disclosure set out by Wigmore on evidence, third edition, 1961, vol. 8, paragraph 2285 as follows:

1) The communications must originate in a confidence that they will not be disclosed.

2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.

3) The relation must be one which in the opinion of the community, ought to be sedulously fostered.

4) The injury that would enure to the relation by the disclosure of the communications, must be greater than the benefit thereby gained for the correct disposal of litigation.

I have no difficulty in finding that condition 1 has been satisfied; that is that Mr. Gayder's interview and the transcript thereof, originated in a confidence that it would not be disclosed.

I also find that the second condition has been satisfied; that is that the element of confidentiality is essential to the operation of investigations such as this one and, in particular, to further interviews with Mr. Gayder of which this was intended to be only the first of several.

As to the third condition, surely, it is in the interest of the community that such confidential interviews be carried out, if they assist in preparing for a judicial inquiry.

As to the fourth condition, since Mr. Kelly is in possession of the information sought by this application, and is just as capable as any of the other parties, to use the information for the benefit of the inquiry, and since disclosure of the information in violation of the undertaking would not only destroy the chances of further interviews with Mr. Gayder, but would inhibit future investigations, in general, and perhaps lower the public's respect for the administration of justice, I find this condition has also been fulfilled.

Accordingly, on the authority of *Slavutych v. Baker*, the transcript of the interview is inadmissible.

It can be put no better than the quote from Lord Denning, adopted by the Supreme Court of Canada at p. 313 of the report, as I understand it,

> "The essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence, is not allowed to use it as a springboard for activities, detrimental to the person who made the confidential communication."

A second type of privilege has been recognized by the Supreme Court of Canada in *Solicitor General of Canada et al v. the Royal Commission of Inquiry into the confidentiality of health records in Ontario et al*, [1981], 23 C.R. (3d), at p. 338.

The issue in this case was the existence of a police-informer privilege to protect the identity of informers.

At p. 355, Chief Justice Laskin says: "It is recognized, and I have already alluded to this, that merely because information is confidential does not ordinarily preclude its disclosure in evidence when commanded in a judicial proceeding in which it is relevant. A breach of confidence may, of course, give rise to an action for breach of contract or it may have a tort aspect, as where trade secrets are concerned, but no such considerations arise here. The recent judgment of this Court in *Slavutych*, supra, shows that confidence may be protected by denying resort to information elicited in confidence, at least where it is sought to use the information against the person providing it. The present case is not concerned with confidential information as such but rather with a claim of privilege in which, as is common to all such claims, confidence is a key element.

What *Slavutych v. Baker et al* (1975), 55 D.L.R. (3d) 224, [1976] 1 S.C.R. 254, 38 C.R., 306, established is that the categories of privilege are not closed.

The Court speaking through Mr. Justice Spence in the *Slavutych* case, was of the opinion that the four-fold test propounded in Wigmore on evidence, provided a satisfactory guide for the recognition of a claim of privilege.

It is unnecessary, however, to invoke the test here. No doubt can be cast upon the existence of a police-informer privilege to protect from disclosure, the identity of informers whose assistance is important in the investigation and detection of crime. The rationale is clear enough. Were it not so, such sources of aid to the police would dry up. The information which informers may provide is one thing and is, of course, intended to be used and disclosed. Their identity is something else, unless they choose to reveal themselves, or are otherwise revealed."

I consider that by analogy, the special privilege could be applied to the present situation where if confidentiality is not guaranteed, the source of information would dry up.

In addition to the decided cases, in arriving at my decision, I have taken into account the following considerations:

Firstly, the applicant submits that refusal to recognize his "right" to disclosure is a denial of natural justice. I was not provided with any jurisprudent or precedent that there is such a right to disclosure in an inquiry under the *Public Inquiries Act*, and I know of none. But I am aware that it is the general practice for Commission counsel to supply parties having standing with summaries of the evidence he expects to lead.

Very full disclosure of the other evidence gleaned by the Commission, apart from that of Mr. Gayder, has been granted as a matter of courtesy, but that courtesy has not hardened into a right; and I am not persuaded that counsel have the right to the transcript of Mr. Gayder's interview, or for that matter, the transcript of the interview of any witness.

While considering the principle of natural justice, it occurs to me that Mr. Gayder would have a much greater cause to complain of a denial of natural justice if, after having been enticed by an undertaking of non-disclosure into giving information he could not have been compelled to give, that undertaking is breached, and the contents of his interview are disclosed.

Secondly, Mr. Ratushny, general counsel for the Board, was advised by a letter from Mr. Kelly dated September 13, that the only way he could obtain permission to interrogate Mr. Gayder was to agree to certain conditions.

The correspondence went like this: On September 9, 1988, Mr. Roland, the then-counsel for Mr. Gayder, wrote to Mr. Kelly stating, in part, and I quote the relevant parts,

> "James Gayder is prepared to be interviewed by you or your staff prior to the presentation of his testimony to the Inquiry. Mr. Gayder is willing to cooperate with Commission counsel, and to submit to such an interview upon the following conditions:
>
> 1) The Government of Ontario indicates that his expenses for a legal representation are to be paid by it;
>
> 2) The interview is to be off the record. As I am sure you are aware, such interviews in public inquiries are traditionally treated as off the record. The purpose is to assist Commission counsel in its work so that he may present the evidence in a thorough and orderly manner. Mr. Gayder is willing to provide you with such assistance on the understanding that it is not to be used for any other purpose.
>
> In particular, we are not prepared to participate in a transcribed pre-inquiry in which Mr. Gayder's unsworn evidence is then circulated to all counsel. Mr. Gayder will give his evidence on any topic once at the Inquiry. You and your staff are not to reveal the contents of the interview to any other party or person."

Following receipt of that letter on September 13, 1988, Mr. Kelly wrote to Mr. Ratushny, and I quote the relevant parts.

"As I indicated at our informal meeting of September 6, I will provide disclosure of the documents to be introduced, a list of the names of witnesses to be called, and the hoped-for order in which they are to be called, together with the gist of their evidence.

The disclosure of the last of these matters is, of course, subject to any conditions placed on the Commission with respect to the interviewing of prospective witnesses."

On October 4, 1988, Mr. Ratushny replied to Mr. Kelly,

"In your letter dated September 13, 1988, you indicated that the disclosure which you would provide of the gist of the evidence of your witnesses would be:

'Subject to any conditions placed on the Commission with respect to the interviewing of prospective witnesses.'

This position raises potentially serious questions about both the manner in which your investigation is being conducted, and the effectiveness of disclosure in ensuring that the public hearings will be conducted in a thorough, as well as an expeditious manner.

Please let us know immediately, which witnesses were interviewed subject to 'conditions placed on the Commission' and what those conditions are."

On October 13, 1988, Mr. Kelly wrote to Mr. Ratushny.

> "Your letter of October 4, 1988, questions the existence of conditions which may have been placed on the Commission concerning the interview of witnesses. Counsel for Mr. Gayder has refused to allow Commission investigators or counsel to interview his client except on the following conditions:
>
> 1) That the Government of Ontario agrees to pay the legal expenses of Mr. Gayder at a rate acceptable to his counsel;
>
> 2) That an interview is to assist Commission counsel in presenting Mr. Gayder's evidence in a thorough and orderly

> > manner, and the contents of the interview are not to be revealed to any other person - to any other party or persons.
>
> We have no power to compel Mr. Gayder, or for that matter anyone else, to take part in an interview with Commission counsel or investigators.
>
> Faced with this position, we have one of two choices: a) Not to interview Mr. Gayder; or b) interview him on those conditions. We thought it appropriate that we interview him on that basis in order to have an understanding of his position.
>
> The matter is somewhat hypothetical since the issue of funding was not resolved until Wednesday, October 12, and as a result, counsel for Mr. Gayder has refused to let us interview him on other matters except for the Parnell tire question, the Parnell paint job, and the silver tea service."

That, then, is the correspondence on the subject.

A public hearing was held on October 17 which Mr. Ratushny and other Board counsel attended, as well as the other counsel involved; and at that hearing, many matters were discussed, but no protest was made concerning Mr. Kelly's proposed conditional interview with Mr. Gayder, although the correspondence was discussed, and the correspondence concerning the conditional interviews was filed by Board counsel as an exhibit. The interviews, subject to the non-disclosure undertaking, then proceeded on November 3, following by some two weeks the hearing on October 17.

Mr. Gayder having been persuaded to give his interview on the basis of an undertaking of which Board counsel was notified well before the interview was proceeded with, without any protest from the Board, it would seem to me that the Board is now estopped from attacking the undertaking.

Mr. Shoniker argues that the letter of October 4, viewing with alarm the mention of conditions, is such a protest. But the request for further information contained in that letter, and which further information was given on October 13 without any further dissent, negates that submission, and would leave the impression that the proposed course might be acceptable, and the following silence, even at the hearing of October 17 and for two weeks thereafter, could well be taken as consent.

Thirdly, many of the counsel on this Inquiry, and there are ten or eleven of them, seem to have lost sight of the fact that this is an Inquiry into the operation and administration of the Niagara Regional Police Force, and not a trial of criminal charges against particular individuals. An inquiry under the *Public Inquiries Act* is not an adversarial process, although an observer of the Inquiry up till now might be excused for thinking so.

This Inquiry has two very capable counsel whose role is to bring out under Oath, all information relevant to the terms of reference, and to display it to the public as well as to me as Commissioner.

Counsel for parties granted standing may question witnesses and tender evidence, if they so wish in order to call attention to their particular interests or points of view, but this is merely supplementary to the evidence provided by Commission counsel.

Commission counsel represent the public, not any particular interest, and the public relies on them to ensure that an inquiry is full and complete. They have full knowledge of all the information assembled by the investigators, including the interview with Mr. Gayder. They are in a position to bring out all the evidence pertinent to the issues without favour to any party, and I have full confidence that they will do so.

Mr. Shoniker has on several occasions, pronounced his admiration for Mr. Kelly's competence and fairness, and for the expertise and thoroughness of the Commission investigators, so it would seem that he agrees with me.

If after hearing Mr. Gayder's evidence, when he is eventually called to testify, counsel can satisfy me that there is pertinent information that should have been elicited from some previous witness which Mr. Kelly failed to bring out, and which counsel could not ask about because he did not have access to Mr. Gayder's interview, I have already advised him that such witnesses will be called, and I repeat that assurance.

Fourthly, one of the first moral lessons we learn as children is "a promise is a promise;" that is, that it must be honoured. And as lawyers, that an undertaking is sacred and inviolable. There may be extraordinary circumstances such as a life and death situation where an undertaking must be broken, or where the person giving the undertaking has no right to give it. That is not the case here.

Mr. Kelly, representing this Commission of Inquiry called by The Queen, represented by the Lieutenant Governor, thus giving the status of a Royal Commission, has given a solemn undertaking that if Mr. Gayder would assist the Commission in allowing the Inquiry investigators to interrogate him, the information so obtained would be used only for the purposes of their investigations to allow them to contact and interview persons, to check on a story, and to investigate avenues they might not have otherwise known about. They, that is Mr. Kelly and the Commissioners – and the investigators, for their part, would not disclose that information to any other person.

I am not prepared to order Mr. Kelly or the investigators to breach that firm undertaking. In my view, to do so, would bring the administration of justice into disrepute in the eyes of the public.

Fifthly, although it is not as important a consideration as those I have already mentioned, I must bear in mind the effect on further interviews with Mr. Gayder, and on future Commissions of Inquiry, should I hold that an undertaking not to disclose is not inviable. It is in the interest of justice that information not otherwise obtainable, should be able to be obtained subject to reasonable conditions guaranteed to the reluctant witness.

As I have already noted for similar reasons, the Supreme Court of Canada has consistently held that guarantees of non-disclosure of the identity of informers are proper, despite vigorous attacks on the ground that it inhibits cross-examination as to the reliability of the informant.

Mr. Brady raised an objection to the giving of an undertaking of confidentiality, on the ground that nowhere in the *Public Inquiries Act* is such an undertaking authorized.

Section 17, subsection (1) of the *Act*, provides simply that, a Commission may in writing appoint a person to make an investigation, relevant to the subject matter of the inquiry it is conducting. No direction as to the mode of investigation is given. Not even the taking of a statement is explicitly authorized.

The means of investigation are left up to the Commission. The fact that there is no express authorization for a particular method of investigation, does certainly not of itself, preclude whatever method of investigation the Commission may adopt.

One of the counsel asked the rhetorical question, "Who is controlling the evidence, Mr. Gayder or Mr. Kelly?" I can only assume that the suggestion arose out of the heat of battle and without due thought.

Evidence is information sworn to under Oath in Court. When Mr. Gayder is called as a witness, counsel can be assured that he will not be controlling the evidence. All relevant evidence will be brought out.

What we are talking about in this application is information, not evidence. Mr. Gayder has a constitutional right to give no information until he is sworn in as a witness. He has the right to remain silent. It is an immemorial right that lawyers will defend to the death, and I would be surprised to hear a suggestion that there is something improper about it.

It has been amply established that had no undertaking of confidentiality been given, no interview with Mr. Gayder would have been forthcoming, and could not have been forced from him, and no one, not even Commission counsel, would have the information so eagerly sought by the applicant.

The bottom line, so far as I am concerned, is that no one has explained, although given every opportunity, how the interests of the inquiry or, indeed, of any of the parties including the applicant, would have been advanced had Commission counsel refused Mr. Gayder's condition.

That, however, would be the inevitable result at a ruling against the sanctity of an undertaking of confidentiality been in effect on November 3 before that interview was undertaken.

For the above reasons, I dismiss the application.

Ruling of February 27, 1989: Journalistic privilege - the compellability of Mr. McAuliffe

(*Orally*) This is an application by the Canadian Broadcasting Corporation to quash a subpoena served on Gerry McAuliffe, a CBC reporter, requiring him to give evidence at this Inquiry, and to produce documents, tapes, and writings, etcetera, in his possession or control relating to communications with James A. Gayder between 1982 and 1987.

On, or about, July 3, 1984, CBC radio made a broadcast heard throughout the Niagara Peninsula, and perhaps a wider coverage, alleging irregularities within the Niagara Regional Police Force. From the lead-in or narrator of the broadcast, it appears that such broadcasts had been continuing for some time in the past. The material parts of the broadcast are as follows; the lead-in announcer states:

> "The Chief of the Niagara Regional Police Force, Jim Gayder, has been under investigation for a year now by the Solicitor General's department. The probe stems from a series of stories by CBC radio news. Chief Gayder has been breaking the guns laws to make it easier for local businessmen and friends to buy handguns.
>
> There has been a new development. The CBC has obtained copies of RCMP documents that show Chief Gayder owns 60 restricted handguns. He says he got many of them from his friends. Gerry McAuliffe has more on the story."

And then Mr. McAuliffe came on.

> "The Chief of the Niagara Force says he collects stamps, beer cans, and guns. Jim Gayder says no one has ever questioned him about his beer cans or his stamps, but his guns are a different matter. Chief Gayder has been the man in charge of firearm registrations in the Niagara peninsula for more than a decade, and he has other gun related duties as well. The police gather up about a 150 handguns and rifles every year.
>
> They come from a variety of sources; murder cases, armed robberies, suicides, people caught with un-registered weapons confiscated by the police, and guns from people who just want to get rid of them so they turn them over to the police department for dis-

> posal. Some of the guns are junk, others are expensive collector items.
>
> Jim Gayder says he never acquired any of his guns from the police department. He says his 60 registered handguns are mostly junk, and he says he got them from friends for just a few dollars each.
>
> Copies of RCMP documents obtained by the CBC indicate Chief Gayder's guns to be worth thousands of dollars. Many of them are high-powered weapons, 9 millimetre Mausers, U.S. Army guns, Colt .45's, .38's, and assorted others. The documents show that 13 of the guns were originally registered to the old Welland Police Department; they are now registered to Chief Gayder."

That is the material part of that broadcast, and then two days later on July 5, 1984, there was a follow-up broadcast, and the material parts of that are as follows. The narrator or lead-in stated:

> "The Police Chief from the Niagara Region says a new policy was introduced five years ago to tighten control of guns confiscated by the police. Chief Gayder says guns are now chopped up, then melted down at a local smelter, but members of the Force say that if there is a new policy they haven't been told about it. Gerry McAuliffe has this report."

Then Mr. McAuliffe comes on:

> "There is a good reason rank-and-file members of the Force are unaware of the department's gun policy; it's never been put in writing. Superintendent Frank Parkhouse says the order was a verbal one, and made known only to the Force's senior administrators. The handling of guns by Niagara Regional Police has become a public issue twice in the last year. Chief Jim Gayder told CBC radio news he has ignored the stringent requirements of the *Criminal Code* when registering guns for his friends and local businessmen.
>
> One gun, he supposedly checked out for one businessman, was found by the CBC to be stolen. Chief Gayder gave the stolen gun back to the man without registering it. That meant that the businessman was then in possession of an unregistered firearm; that

> is a criminal offense that carries a sentence of up to five years in jail."

Then the broadcast goes on referring to another person who is not a police officer.

It is, I suggest, rather significant that the broadcast takes credit for causing the Solicitor General to call an Ontario Police Commission investigation, which accords with the submission of Police Commission counsel, that Mr. McAuliffe's broadcasts were responsible to a large degree for the present inquiry, and therefore Mr. McAuliffe should be required to give evidence.

In any event, apparently as a result of the CBC broadcasts, and rumours of irregularities in the operation of the Niagara Regional Police Force, and the resulting public agitation, the Niagara Regional Police Commission in the fall of 1987 requested the Solicitor General of Ontario to initiate a public inquiry. On March 25, 1988, the Lieutenant Governor in Council ordered that a Commission be issued to me "to inquire, report upon, and make recommendations with respect to the operation and administration of the Niagara Regional Police Force since its creation in 1971," with particular regard to 12 areas of reference.

One of these related to improprieties or misconduct on the part of members of the Force. And another related to the propriety, efficiency, and completeness of any investigation into the Niagara Regional Police Force since its creation, which would include the Ontario Police Commission investigation mentioned earlier.

Two of the paragraphs of the preamble to the Lieutenant Governor's order give some indication of the effect media reports and rumours, and broadcasts such as those of the CBC, have had on the public's perception of their Police Force.

The Order in Council reads at its commencement: "On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that; whereas concern has been expressed in relation to the operation and administration of the Niagara Regional Police Force, and whereas the expression of such concerns may have resulted in a loss of public confidence in the ability of the Force to discharge its law enforcement responsibilities, and whereas the Niagara Regional Board of Commissioners of Police has asked the government of Ontario to initiate a public inquiry into the operation and administration of the Force, and whereas the government of Ontario is of the view that there is a need for the public and members of the Force to have confidence in the operation and administration of the Force," and then it goes on to order the inquiry. It sets out the rather long series of specific references.

With that background Mr. Kelly, as Commission counsel, served upon Mr. McAuliffe the subpoena earlier referred to. It is not an oppressive or wide-ranging subpoena. It follows the usual form, and simply requires, as such subpoenas normally do, that the witness produce documents, tapes, relating to the subject of his evidence; namely, communications with James Gayder.

Mr. Kelly stated that during his submissions on this application that his purpose in calling Mr. McAuliffe, as a witness, was to ascertain whether Mr. McAuliffe had any additional information that would assist this Commission in carrying out its duties as set out in the terms of reference, particularly in relation to Mr. Gayder's alleged improper possession of handguns, and specifically in relation to the information he had obtained from Mr. Gayder in the course of any interviews he had with him leading up to his broadcasts.

Mr. Kelly stated that he did not intend to ask Mr. McAuliffe to disclose sources of his information. Indeed, the source of the information he intended to inquire about was already known; that is, it was Mr. Gayder. Nor can there be any question of confidentiality. CBC counsel does not suggest there is, and Mr. Gayder's counsel has specifically stated that there was none in relation to his client.

I take it to be common ground amongst all counsel here, including I believe CBC counsel, that as the law of Canada presently stands in relation to communications between a journalist or reporter and a person he interviews, apart from interlocutory applications and libel and slander actions, there is no common law privilege giving the interviewer the right: a) to refuse to be sworn, b) to refuse to give evidence once sworn, and c) to refuse to disclose sources, and as well that there is no such statutory privilege unless section 2, sub s. (b) of the *Canadian Charter of Rights and Freedoms* can be so interpreted.

The relevant parts of section 2 of the *Canadian Charter of Rights and Freedoms* reads as follows:

> Everyone has the following fundamental freedoms; (b) freedom of thought, belief, opinion, and expression including freedom of the press and other media of communications.

Mr. Henry submits that section 2, sub-section B, was intended to ensure the integrity of the journalistic process, and that includes the journalist's privilege of non-disclosure of information received from any source, as well as identification of the source itself. He argues that otherwise a member of the media might be perceived as an "investigative arm of authority," and that this might cause prospective sources of information to be reluctant to give information to "an investigative journalist." As well, concern, re future disclosure, might affect the way the reporter frames his questions, and affect his decision as to retention or destruction of documents he obtains, and might even affect the accuracy of his reporting should he decide that it is unwise to make notes for fear of being forced to disclose them.

In the abstract, this argument has some appeal, although I am somewhat concerned about the suggestion that a reporter, such as Mr. McAuliffe, would consider imperiling the accuracy of his reports by not taking notes in order to frustrate later attempts to make him disclose them, or that he might selectively edit his notes for the same reason.

If, as Mr. Henry submits, a thought not written down is a thought potentially forgotten, the question arises did Mr. McAuliffe not write down some admissions, or some exculpatory statements, he received from Mr. Gayder for fear he might later have to produce his notes, and thus he might have forgotten parts of what he heard. If there is such a likelihood, surely Commission counsel and Mr. Gayder's counsel should be allowed an opportunity to probe Mr. McAuliffe's recollection of important information he may have temporarily forgotten, because they were omitted from his notes.

This application has been argued on the basis of examining Mr. McAuliffe in relation to his two broadcasts of July 3 and 4, 1984; portions of which I have already read, concerning Mr. Gayder's alleged breach of gun laws. There were many other broadcasts by Mr. McAuliffe imputing misconduct and criminal activity to members of the Niagara Regional Police Force in areas other than guns, which undoubtedly played a large part in creating a loss of public confidence in the Force, and were probably partly responsible for the calling of this Inquiry.

I have what purports to be transcripts of 20 of these, and there may be more. It may be that they will be relevant to other phases of this Inquiry, and that any ruling I make on this application will affect counsel's right to examine Mr. McAuliffe in relation to them. At least one of the allegations, which names no names, was so general as to blacken the reputation of the whole Force.

For example, one broadcast which apparently occurred, according to the contents of it, the day after Mr. Gayder resigned as Chief stated:

> "There were instances of policemen selling extra brand-new uniforms, shirts, boots, gun belts, and billy clubs to any one with a buck."

There were several more such allegations which I do not wish to repeat at this stage.

If Mr. Henry's submissions are correct, then Mr. McAuliffe cannot be asked to give any further information he may have as to such alleged criminal conduct. And the mandate of this Inquiry, under reference N°. 8, to investigate and report upon misconduct on the part of members of the Force will be frustrated; and this and other damning indictments of the Force which were publicly broadcast by the CBC will be left hanging in the air in the minds of the public.

Nevertheless, in spite of the potential damage to this Inquiry if it is unable to investigate Mr. McAuliffe's allegations and other information by calling him as a witness, I must now consider whether there is a special privilege in Canadian law that protects Mr. McAuliffe from being required to support his allegations under oath.

Mr. Henry refers to *Pacific Press Ltd. and the Queen et al.*, 37 CCC, (2d) at p. 487. And *Descoteaux et al. v. Mierzwinski and the Attorney General of Quebec et al*, 70 CCC, (2d), at p. 385, which cases set out that a search warrant should not be issued unless the applicant establishes first whether or not a reasonable alternative source of obtaining the information was available, and second if available that reasonable steps have been taken to obtain it from the alternative source.

This same submission was put forward in *Re Canada Post Corporation and the Canadian Union of Postal Workers*, 19 LAC, (3d), at p. 361; where the arbitrator, Professor K. P. Swan, rejected it because both of the cases quoted dealt with the issuances of search warrants, which are significantly different from subpoenas. I adopt his reasoning without repeating it here.

As Chief Justice Nemetz, as he then was, said at p. 487 of the *Pacific Press* case, referring to search warrants:

> "From time immemorial common law courts have been zealous in protecting citizens from the unwarranted use of this extraordinary remedy."

In my view, a subpoena does not fall into that category.

In any event, Mr. Parkhouse, the only alternative source apart from Mr. Gayder himself as to the interview that led to the broadcasts in question, has already given evidence and it contradicts in some areas Mr. McAuliffe's broadcast statement; particularly, that "Mr. Gayder stated that he has never acquired any of his guns from the police department," at least in so far as Mr. Gayder said (according to Mr. Parkhouse) that he had acquired guns from the Welland Police Department.

Since one of the fundamental questions in this phase of the Inquiry is whether Mr. Gayder did acquire guns from the police department, and if so whether the acquisition was proper, this conflict cries out for a resolution by the cross-examination of all three participants. Since, Mr. Gayder is the target of the allegations by Mr. McAuliffe, it would not only be unfair to force Mr. Gayder to give evidence without knowing what Mr. McAuliffe's evidence might be should Mr. McAuliffe be required to give evidence later, but since Mr. Gayder's credibility is bound to be called into question, this Inquiry should first have the benefit of Mr. McAuliffe's evidence which is apparently different from that of Mr. Parkhouse, and quite possibly from that of Mr. Gayder's.

The only two Canadian cases dealing with section 2(b) of the *Charter* in relation to privileges of journalists, to which I have been referred by counsel, both hold that that section does not aid journalists who resist attempts to force them to divulge information gained during their investigations.

In *Re Canada Post Corporation and the Canadian Union of Postal Workers*, which I have already referred to, Professor Swan stated at p. 372:

> When one reviews the jurisprudence in this country, in the United Kingdom and, perhaps more relevant to the situation in Canada after the *Canadian Charter of Rights and Freedoms*, in the United States, whatever may be the dicta in specific cases there is simply no general privilege for journalists, no right for members of the journalistic profession to decline either to attend as a witness in a particular proceeding or to refuse to answer a particular question simply by reason of their employment as journalists.

At p. 373, Mr. Swan also quotes from Lord Denning in the *Attorney General v. Mulholland*, 1963, 2 Q.B. 477, where he says:

> "Take the clergyman, the banker or the medical man. None of these is entitled to refuse to answer when directed to by a judge. Let me not be mistaken. The judge will respect the confidences which each member of these honourable professions receives in the course of it, and will not direct them to answer unless not only is it relevant but also it is proper and, indeed, necessary question in the course of justice to be put and answered. A judge is the person entrusted, on behalf of the community, to weigh these conflicting interests — to weigh on the one hand the respect due to confidence in the profession and on the other hand the ultimate interest of the community in justice being done or, in the case of a tribunal such as this, in a proper investigation being made into these serious allegations. If the judge determines that a journalist must answer, then no privilege will avail him to refuse."

Professor Swan goes on to say at p. 377:

> "As I read these cases, it is an appropriate interpretation of s. 2(b) of the *Charter* that before a subpoena issued to a journalist *qua* journalist can constitute a *prima* facie breach of the freedom of the press, there must be a demonstration of some affirmative harm or danger to the institutional interests of the press, rather than merely inconvenience or annoyance to individual journalists."

As to section 2(b) of the *Charter*, he says at p. 375:

> "Given the way in which s. 2(b) is written, I am of the view that it should be seen as a broad right to intellectual freedom, and not as a special concession to any class of individuals. Nor do I see that broad proposition in any way cast in doubt by any of the important

> cases which have dealt with the freedom of the press since the inception of the *Charter*. I think that all of those cases have treated press freedom as a part of a much broader freedom belonging to everyone: a freedom to be informed, a freedom to inquire, and a freedom to express the outcome of that information and that inquiry."

I have read at some length from Professor Swan's ruling in the *Canada Post* case, because he says it much better than I could. I agree with his observations, and they were agreed with by the Alberta Court of Queen's Bench, and the Court of Appeal of Alberta in *Re Moysa and Labour Relations Board et al.*, 28 D.L.R, (4d), p. 140; where the Queen's Bench held that there is no privilege at common law, or under section 2(b) of the *Charter*, justifying a journalist's refusal to testify, not only as to information received during an interview, but even as to disclosure of sources. The decision was upheld by the Alberta Court of Appeal, and the reasoning of the Queen's Bench was adopted, and a further appeal to the Supreme Court of Canada is expected to be heard in the near future.

The trial judge, at p. 147, after referring to Professor Swan's interpretation of section 2(b) in the *Canada Post* case, which I quoted a moment ago, says:

> "Viewed in that light, compelling a reporter to testify could scarcely be regarded as infringing upon her rights to think, believe, express herself and have opinions, including the use of the press and other media of communication for those purposes."

The court goes on at p. 148:

> I am inclined to believe that s.2 of the *Charter* gives everyone freedom to use the press and other media of communication to express their thoughts, beliefs and opinions and to have their thoughts, beliefs and opinions freely informed through the agency of the press and other media of communication. The fact that I as an individual may be compelled by a duly authorized tribunal to breach confidentiality in the interests of the due administration of justice does not impinge upon my freedom to think as I like, to believe what I want, to have such opinions as I want, nor to express myself as I wish. Nor does it make me any the less free to have access to the press and other media of communication in the exercise of those four fundamental freedoms.

> Even if the press enjoys special status within s. 2 as a class, and I hold that it does not, its members enjoy no privilege, qualified or otherwise, to refuse to testify, even as to their sources, before the board.

The Alberta Court of Appeal at 43 D.L.R., (4d), at p. 159, in agreeing with the trial judge quoted the provisions of s. 2(b) of the *Charter of Rights*, and went on to say at p. 160:

> "The declaration does not advance the appellants claimed immunity to testimonial compulsion here. The freedom expressed has been held to protect and guarantee expression of thought, belief, and opinions for all Canadians including the press and other media. Beyond that we think that even the most liberal and purposive application of the wording in s. 2(b) could not even by necessary intendment create the exclusionary enclave pursued by the appellant in this case."

As I have observed that case has been appealed in the Supreme Court of Canada and should be heard next month, but at the moment that is the law as it exists in Canada in my opinion.

I adopt the reasoning and conclusions of these cases, but I also consider that because of the importance of freedom of the press and the possible "chilling effect" that such rulings might have on the flow of information to the media, a journalist should only be required to testify as to information gained by him if the information expected to be elicited is highly important to the inquiry, and this should be considered on a case by case, or situation by situation, basis.

The peculiar nature of the present Inquiry must be appreciated in considering the importance of its search for information. All the cases quoted were in an adversarial forum, where the search for information was to further the interests of a particular party, and was only incidental to the main issues.

To the contrary, the very essence of this inquiry, as its name implies and as its Order in Council mandates, is to "inquire into and report upon, and make recommendations with a respect to" some twelve items of reference. It is a very different animal from a trial or an arbitration. It is not for the benefit of a few litigants; it is to inquire into and investigate on behalf of the public.

If it is limited in its investigations by a claim of privilege, that privilege must be affirmatively established and be of overwhelming importance to the person claiming it. I have heard no evidence of great harm that will ensue if Mr. McAuliffe is required to testify, beyond a matter of a breach of some journalistic principle.

Mr. Henry says Mr. McAuliffe is willing and anxious to testify in order to assist this Inquiry, but he owes a greater allegiance to the group he represents, the journalists, in upholding their claimed privilege of non-disclosure. If their claim is that they have a blanket privilege to such effect, I point out that no court has accepted such a proposition.

If I am wrong, and section 2(b) of the *Charter* does grant them such a privilege, then in the present case I would have held that under section 1 that privilege is subject to a reasonable limit requiring Mr. McAuliffe to disclose any information he has received which is relevant to the references I am required by Order in Council to inquire into, and that that limitation meets the proportionality test set out in the Oakes case to which Mr. Henry referred.

Professor Ratushny, as an Officer of the court and of this Inquiry, has stated that at a December 1988 meeting between Mr. McAuliffe and his counsel and the counsel having status at this Inquiry, Mr. McAuliffe stated that he had relevant information of wrongdoing within the Niagara Regional Police Force, which went far beyond the broadcast material, and it was much more than the Inquiry investigators knew about. I take that then as valid evidence, it coming from Professor Ratushny.

It has been stated many times by all counsel that the main purpose of this Inquiry is to once and for all ferret out and report upon all matters of misconduct within the Niagara Regional Police Force, and to avoid the widely circulated criticism of several past investigations that they were not efficient, complete, and open to the public according to the public view.

The public now being aware that Mr. McAuliffe has stated that he has further information of wrongdoing not yet disclosed, irreparable harm will be done to the image of this Inquiry if this information is left uninvestigated. If Mr. McAuliffe has no such information, he need only say so under oath. If he has such information, he cannot refuse to disclose it, and by doing so discredit this Inquiry. There can be no even balance between the interests of the public in ferreting out wrongdoing though this Inquiry, and Mr. McAuliffe's real or claimed privilege in keeping it secret.

Mr. Henry asks "where is the proof of the necessity of examining Mr. McAuliffe," the necessity, of course, is that the unique nature of this Inquiry requires that the public be satisfied that every source of information of possible wrongdoing has been explored, or if you will, that no stone has been left unturned.

Mr. Henry has also asked that this Inquiry give respect to the journalistic process. As the Inquiry Commissioner, I think I have throughout the several months this Inquiry has been in existence, shown respect for the journalistic process, and for the many representatives of the media. I have allowed TV coverage. I have granted interviews whenever asked. I have arranged for a transcript of each days proceedings to be available to the media as soon as it is available to me. And to date, I have received no complaints from any journalist, although I have had to limit the number of microphones, and cameras, with a view to not interrupting the proceedings of this Inquiry. But this respect should work both ways; it is not a one-way street.

I have already indicated how, because of the wide public coverage these proceedings receive due at least in part to the co-operation we have given television, radio, and the press, the image of this Inquiry will be harmed if some important avenue of investigation is left untapped. And I ask Mr. McAuliffe and the Canadian Broadcasting Corporation to show respect for, and co-operation with, this Inquiry in sharing with us whatever relevant information they may have to further the interests of the Inquiry.

Surely the interests of the public, which have been referred to so often in argument, justify temporarily suspending the journalist's sacred principle of non-disclosure in order to assist this public Inquiry, and if that were done I am sure that Mr. McAuliffe's colleagues would understand.

In arriving at their decision, I would ask CBC counsel and Mr. McAuliffe to consider the impression that will be left on the watching, listening, or reading public if it appears that the publicly-funded CBC is, on a matter of principle, frustrating the effects of this publicly-funded Inquiry to investigate every possible avenue of information about wrongdoing.

If, in spite of my ruling, Mr. McAuliffe feels obliged to refuse to take the oath and to give evidence, then that is going to be the result. I am sure that to the public, as it apparently is to counsel other than CBC counsel, and certainly as it is to me that, it is unbelievable that one public body would refuse to co-operate with another public body in serving the interests of that same public.

I rule that the subpoena will not be quashed, and that there is no privilege protecting Mr. McAuliffe from being sworn as a witness and from giving evidence. I do appeal to the parties to try to work out some compromise that will protect both the integrity of this Commission and the integrity of the media.

My own view is that despite the lack of any privilege, the question of compelling journalists to testify has to be considered on a case to case, and situation to situation, basis; just as judges now do in the case of psychiatrists, priests, and others. The same course could be followed if Mr. McAuliffe is sworn and answers some questions, but refuses to answer others. And also, in assisting him in that, I suggest that his notes could be edited in conjunction with his counsel and Commission counsel to eliminate all references that may be personal thoughts, or that may not be strictly relevant to the purposes of this inquiry.

Ruling of October 11, 1989: Conflict of interest - Mr. Brady's capacity to appear before this Commission

(*Orally*) I have decided that because of the public interest in this Inquiry that although the submissions in connection with what I am about to give reasons on was held *in camera*, that my reasons for my ruling should be given in public, so that the public can realize or perhaps understand to some extent at least as to what went on in the absence of the public and the media.

This Inquiry is about to enter on a new phase, that is, under reference Nº. 8 of the Order in Council: To inquire into and report upon the propriety, efficiency, and completeness of the investigation carried out by an Internal Investigation Team of the Niagara Regional Police Force.

This team was set up in, I believe, February of 1987, or thereabouts, by Acting Chief John Shoveller following the resignation of former Chief of Police, James Gayder, with the object of investigating wrongdoing or misconduct within the Force, as Chief Shoveller expressed it.

Acting Deputy Chief James Moody was placed in charge and he added to his team: Staff Sergeant Joseph Newburgh, Sergeant Cor VanderMeer, Sergeant Gerald Melinko, Constable George Onich, Ms Carol Berry, and Ms Billie Hockey.

Sergeant VanderMeer was granted standing at the outset of this Inquiry, and is presently represented by Ms Karen Dunlop.

A few weeks ago, Ms Faye McWatt applied for standing for the other members of the Internal Investigation Team. This was granted, and Ms McWatt was retained as counsel for those members, other than Sergeant VanderMeer.

Mr. Ronald Brady has represented the Niagara Regional Police Association since these hearings commenced in November of 1988.

At the opening of the hearing yesterday, Ms McWatt applied for an order removing Mr. Brady as counsel for the Police Association, for at least the duration of the present phase, on the grounds of conflict of interest. The alleged conflict arises out of the fact that Mr. Brady has, in the past but since the Internal Investigation Team was formed, acted as counsel for

Sergeant Melinko and Constable Onich in unrelated legal matters, during which time he received confidential information relating to the internal inquiry.

It is common ground that the Police Association is interested in inquiring into the propriety, efficiency, and completeness of the internal inquiry, since the Force's reputation may be affected; and that Mr. Brady as its counsel would be allowed to examine witnesses, including members of the Internal Investigation Team.

Upon Commission counsel raising the question of whether Mr. Onich and Mr. Melinko wish to give evidence *in camera*, Ms McWatt (representing them) submitted that this would be preferable since Mr. Onich and Mr. Melinko would feel more comfortable that way. I accordingly requested that only the parties and counsel should remain in the hearing room, and that the cable television should be shut off, and of course that the other media should leave the hearing room.

Had I been aware that both Mr. Onich and Mr. Melinko would refuse to reveal what they told Mr. Brady, I would not have ordered the proceedings to be held *in camera*, and I do not consider that I am breaching the rules of the *in camera* proceedings by revealing that they confined themselves to stating that they considered they had given Mr. Brady confidential information, which he would not reveal, concerning their relationship with other members of the Internal Investigation Team. For the purposes of explaining my ruling, it is essential that I do refer to what they said. Had there been matters of a very confidential or personal nature revealed by them, I certainly would not have been able to reveal them at this time.

Mr. Onich's information to Mr. Brady, according to his evidence, was in relation to his defense on a charge of shop-lifting (that has been mentioned elsewhere here), and consisted of explaining to Mr. Brady the stress of the internal investigation, his role in it, and his past history, and "to some degree," in his words, the role of other team members and his relationships to them. He refused to give any further details in that regard, because he had assumed that that information was given in confidence to Mr. Brady and would never have to be disclosed.

On being asked by his counsel specifically whether he thought the information could be used in cross-examination by Mr. Brady, he hesitated and then agreed that that was possible. What that information was, was not disclosed as I have stated.

Mr. Melinko stated that in 1985 his wife was involved in a motor vehicle accident, and she consulted Mr. Brady in that regard. Mr. Melinko accompanied her to make a claim, in connection with her injuries, under the *Family Law Reform Act*.

Ms McWatt has asked me to point out that in referring to this matter during preliminary submissions by counsel, before the television was shut off, that I inadvertently referred to the consultation with Mr. Brady as being in connection with a domestic dispute. There was of course no domestic dispute, and in fact Mr. Melinko was lending comfort and support to his wife by joining her in her consultation, and by making his claim under the *Family Law Reform Act* which does provide for such claims. And while it relates to a large extent to matters of domestic dispute, it also gives spouses and other dependents certain rights in the event that a spouse is injured in an accident, as the result of negligence on the part of some other person.

Mr. Melinko's evidence, which I feel did not justify *in camera* proceedings, was that on one of the attendances on Mr. Brady that Mr. Brady, knowing that Mr. Melinko was a member of the Internal Investigation Team, remarked that the investigation should be conducted by an outside agency since he (that is, Mr. Brady) had some reservations about, at least, one of the members of the team. Mr. Melinko replied that he considered them all to be "honest and competent." He said it was a very short conversation, but he felt a little uncomfortable about talking about the investigation team at all, since he was a member of it.

He refused to answer further questions in that regard, and stated that he resented any of his conversation with his counsel being repeated, either here *in camera* or elsewhere.

Ms McWatt, in her submissions, stated that she had no problem regarding Mr. Brady taking part in this phase in relation to Mr. Onich or Mr. Melinko — am I correct in that? — since Mr. Brady had given her an undertaking not to cross-examine either Mr. Onich or Mr. Melinko; but her concern was for the other members of the Internal Investigation Team whom Mr. Brady might examine and use information received from Mr. Onich in that regard. That was my understanding, Ms McWatt.

MS McWATT: I believe, your Honour, that I didn't have such a complete undertaking with respect to Sergeant Melinko. I did have an undertaking with respect to Constable Onich. But basically no, not with respect to Sergeant Melinko. I believe submissions would still be made on Sergeant Melinko.

MR. COMMISSIONER: Yes.

MS McWATT: And my position was ...

MR. COMMISSIONER: I meant to refer to that, that so far as Sergeant Melinko was concerned, I think, Mr. Brady interrupted you at that point and said that his undertaking as far as Mr. Melinko went was that he would not cross-examine him, but that he might make submissions in that regard. Am I correct in that?

MS McWATT: I believe so, your Honour.

MR. COMMISSIONER: Yes. Miss McWatt submitted that that would be a breach of Mr. Onich's solicitor/client privilege if other members of the team were examined or cross-examined by Mr. Brady, since Mr. Onich had given the information to Mr. Brady in the expectation that it would not be used in any way, and referred to the Law Society of Upper Canada's rules of professional conduct, rule five, and the commentary number twelve respecting rule five. I shall be referring to those later. Ms McWatt was unable to refer me to any jurisprudence as to the disqualification of a lawyer from using confidential information received from a client in an unrelated matter involving third parties.

Although not directly involved in this application, Mr. Shoniker, for the Board of Police Commissioners, and Mr. Fedorsen, for Chief Shoveller, and Ms Dunlop, for Sergeant VanderMeer, requested permission to take part. And in the absence of any objection, and in the interests of receiving all the help that I could get in arriving at a proper decision, I acceded to those requests.

The thrust of their arguments, as I understand them, was mainly on the appearance of unfairness in allowing Mr. Brady to examine other members of the Internal Investigation Team, when Mr. Onich and Mr. Melinko felt that he might be assisted by information that they had given to him (Mr. Brady) in confidence.

Mr. Shoniker quoted from a number of texts outlining the principle of solicitor/client privilege and urged that there was an interest to be protected, namely that of a client's expectation of the preservation of confidential disclosures, which should outweigh the problem of delay in proceeding with these hearings due to Mr. Brady's removal and the briefing of another counsel.

Ms Dunlop adopted the foregoing arguments, stating that although Mr. Brady had undertaken not to examine Sergeant VanderMeer, because of past associations with him, nevertheless Sergeant VanderMeer would feel uncomfortable when Mr. Brady was examining other Internal Investigation Team members.

MS DUNLOP: Your Honour, I believe we sorted that out last night, and I told Mr. Kelly, at least through Mr. Collins, about this. I indicated that – and I think Mr. Brady can confirm this – my position is as was originally set forward by Mr. McGee that I have no other concerns, other than the fact that Mr. Brady is not cross-examining Sergeant VanderMeer because of their long previous association.

But I still urge the arguments that are put forward by Ms McWatt, Mr. Shoniker, Mr. Fedorsen with reference to the rest of the members of the team. But I certainly am not arguing at this point that there would be any effects on Sergeant VanderMeer.

MR. COMMISSIONER: I see. Thank you, I don't think I got the word that you had changed that. You did mention that, I think; did you not? in your submissions to me that you would ...

MS DUNLOP: I did, but we also indicated that we would have a conference after your ...

MR. COMMISSIONER: I see, I didn't know about the conference, and of course I wasn't in on it.

I agree with the submissions that I should not give great weight to the probability of delaying these hearings for perhaps several weeks while a new Police Association counsel familiarizes himself with the mountain of documents, briefs, and transcripts pertaining to this phase. While it is a factor to be considered, expedition of the proceedings can never outweigh the principles of fairness or the perception of fairness.

There are two distinct principles in issue in this application, although they are closely inter-related. One is the conflict of interest, and the other is the solicitor/client privilege.

The Law Society of Upper Canada, as I have mentioned, has established rules of professional conduct which govern the conduct of lawyers.

> Rule four states as follows:
> The lawyer has a duty to hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of his client, and should not divulge any such information unless he is expressly or impliedly authorized by his client or required by law to do so.
>
> Rule five:
> The lawyer must not advise or represent both sides of a dispute and save after adequate disclosure to, and with the consent of, the client or a prospective client concerned, he should not act or continue to act in a manner when there is or there is likely to be a conflicting interest. A conflicting interest is one which would be likely to affect adversely the judgement of the lawyer on behalf of his or her loyalty to a client or prospective client, or which the lawyer might be prompted to prefer to the interests of a client or prospective client.

There then follows a commentary on rule five; commentary number twelve, which is in effect an explanation or exposition of it, I suppose. That commentary twelve is as follows:

> A lawyer who has acted for a client in a matter should not thereafter act against him (or against persons who were involved in or associated with him in that matter) in the same or any related matter, or when he has obtained confidential information from the other party in the course of performing professional services. It is not, however, improper for the lawyer to act against a former client in a fresh and independent matter wholly unrelated to any work he has previously done for that person, and where such confidential information is irrelevant to that matter.

The traditional test as to whether a solicitor should not be allowed to take part in a judicial hearing is set out in the decision of the English Court of Appeal in *Rakusen v. Ellis et al* (1912), 1 Chancery Division, 831, which established the "probability of real mischief test." At p. 815, the quote is from the Master of the Roles, Cozen-Hardy:

> In my view, however, we must treat each of these cases not as a matter of form, not as a matter to be decided upon the mere proof of a former acting for a client; but as a matter of substance. We must come to a conclusion before we allow any special jurisdictional over solicitors to be invoked, and we must be satisfied that there is real mischief and real prejudice which in all human probability will result if the solicitor is allowed to act.

This test has been adopted in Canada in a number of decisions, including *Mercator Ent. Limited* (1978), 29 N.S.R. (2d) at p. 703. "Ent." is short for Enterprises I assume. It went on to hold that the onus is on the applicant to show that confidential information has been transmitted and that, in fact, there has been prejudice and mischief.

More recently, however, some Ontario courts have applied a less rigorous test and require only that the applicant show a "probability of mischief" or "the appearance of professional impropriety;" and they refer in their judgements to the concept of fairness.

In *Re. Regina and Speid* (1983), 43 O.R. (2d) at p. 596, Mr. Justice Dubbin as he then was, now Associate Justice of Appeal, states:

> In assessing the merits of a disqualification order, the court must balance the individual's right to select counsel of his own choice, public policy, and the public interest in the administration of justice, and basic principles of fundamental fairness. Such an order should not be made unless there are compelling reasons. This clearly is such a case, and to do otherwise would result in real mischief or real prejudice.

That was referring to the facts of that case, which was, as I recall it, a lawyer having represented a man who was charged with murder and against whom the action was withdrawn or dismissed, then proceeded to act for, I believe, the common law-wife; both of them having been charged with infanticide of a daughter.

The lawyer had acted in the first instance for the infant's mother, that charge, I believe, had been withdrawn. He then proceeded to act for the common-law, I believe, husband, when the mother was called as a Crown witness, and it was held that on those facts there was clearly real mischief or real prejudice was probable.

The second principle to be considered is a client's privilege of compelling non-disclosure by his solicitor of confidential communications made by the client to the counsel. A long line of cases has established that, amongst other conditions. To establish such a privilege, the communication must be for the purpose of giving or receiving professional advice. It must be made in order to elicit professional advice from a lawyer based on his expertise in the law. If it was made in a personal capacity, such as casual conversation, rather than being referable to the professional relationship, no privilege will attach.

And in that relation I should refer to Sopinka and Lederman's edition of the "Law of Evidence in Civil Cases."

It should be pointed out that this solicitor/client privilege refers to the client's privilege of preventing his solicitor from disclosing privileged information. And that there is no suggestion here that Mr. Brady will be disclosing such information to others. The privilege is only related to the first principle, that is, of establishing that Mr. Brady has a conflict of interest, and because he has information covered by the solicitor/client privilege which he might use - or that he might use that information to examine the other members of the Internal Investigation Team, and that therefore he should not be allowed to continue to act in this phase of our hearings.

Mr. Brady has stated that he recalls no such information, if it was, in fact, given to him. And, of course, I accept his statement as an officer of the court, but nevertheless that is not the end of the matter.

In spite of my repeated request to all counsel to provide me with jurisprudence to support the submission that the solicitor/client privilege can somehow inure to the benefit of others with whom the client may be associated, none has been offered, and I have found none.

The submissions seem to resolve themselves into an argument that for Mr. Brady to examine some of the applicants, or the applicant's co-members of the Internal Investigation Team, after having discussed the applicants associations with them gives an appearance of unfairness that would erode the public's confidence in the administration of justice, and would leave the applicants with a feeling of betrayal.

Unfortunately, the applicants appear to have assumed that all communications with their lawyer are privileged, and further that it would be improper for the lawyer to appear in an adversary position in a completely unrelated matter; which unrelated matter would have to do with third parties about whom the applicants had given the lawyer information in their subjective belief that it was all confidential.

As mentioned, I am aware of no jurisprudence for this effect, and I do not believe that it was ever intended that the solicitor/client privilege should be so extended. I am not prepared to so extend it. And I do not believe that once the public is aware of the background that there will be any perception of unfairness on the part of the public if Mr. Brady is permitted to examine the four members of the Internal Investigation Team referred to.

I must also bear in mind that the Police Association will find that it is no simple thing if they are required to forego the solicitor of their choice, and force them to retain and brief a solicitor of secondary choice who is unfamiliar with this phase or the onus of evidence already received over the last eleven months; much of which may be relevant to the internal investigation, although I won't know that until I've heard it.

The right to counsel of one's choice is a fundamental principle and is not one likely to be interfered with. Further I am not at all convinced that I should accept the subjective impression of Mr. Onich or Mr. Melinko, however honestly given by them, that the information that they gave Mr. Brady was given for "the purpose of giving or receiving professional advice" (to use Sopinka and Lederman's words), or that the information was such as to be of any use to Mr. Brady in his examination of the team members.

I do not have the information, because of their refusal to give me that information, and the onus is on the applicants to show that: a) confidential information has been given by them to Mr. Brady, and that there has been, or will be, prejudice and mischief if he is allowed to continue; or b) that to allow him to proceed would be manifestly unfair, or would bring the administration of justice into disrepute.

I am not so convinced, and accordingly I am dismissing the application.

Ruling of October 23, 1989: Conflict of interest - Mr. Brady's capacity to appear before this Commission

(*Orally*) This is an application by Mrs. Denise Taylor and the Board of Commissioners of Police to prohibit Ronald Brady, counsel for Niagara Region Police Association, from appearing for the Association during the phase of this Inquiry which will be dealing with an investigation carried out by an Internal Investigation Team of the Niagara Regional Police Force in 1987.

I have already outlined the circumstances surrounding that investigation in my ruling of October 11, 1989, arising out of a similar application by several members of the Internal Investigation Team.

Mrs. Taylor is the present Chairman of the Board of Commissioners of the Niagara Regional Police Force. She was appointed a member by an Order in Council dated January 16, 1986, and was elected Chairman of the Board early in 1987. The ground upon which this application is based is conflict of interest on the part of Mr. Brady in connection with Mrs. Taylor.

Mr. Brady is a partner in the law firm of Bench, Keogh of St. Catharines. Mr. John Crossingham is also a partner in that firm. Mrs. Taylor at one time was a next door neighbour of Mr. Crossingham and the Taylor and Crossingham families became, and still are, very close friends, meeting socially in one or other of their homes at least once or twice a week.

Mr. Crossingham is a municipal and corporate lawyer with admittedly little knowledge of police or criminal law, but after her appointment to the Commission, Mrs. Taylor, during these social occasions, frequently asked Mr. Crossingham for advice regarding procedural matters involving Police Commission problems.

A few days after Mrs. Taylor's appointment, Mr. Crossingham mentioned to her that one of his law partners, Ron Brady, was the lawyer for the Niagara Region Police Association and was the most knowledgeable area lawyer regarding police matters. He asked whether she would like to talk to him and she agreed she would.

At p. 48 of vol. 114 of the transcript of evidence, Mr. Crossingham gives his version of what transpired as follows - he was being examined at that time by Mr. Miller. He said:

> "... since I knew that Ron had certain knowledge of some of the problems on the Force and as he acted for the Police Association, I thought that it would be a wise idea for her to talk to Ron and to get an idea of that side of the picture.
>
> Q. "That side" being what?
>
> A. The Police Association, what input they might have because they would obviously be dealing with Denise, and also the rumours and some of the matters and concerns that I knew had been raised to Ron.
>
> Q. Where did this discussion take place? Let's start with that.
>
> A. Probably in the Taylor home, either in the living room or dining room."

And then further down on p. 49,

> "Q. What did you tell her about Mr. Brady's status?
>
> A. She knew that Ron acted for the Police Association. I mean, that wasn't a matter that I had to belabour or point out or emphasize. That was understood."

Mrs. Taylor's version of the arrangement is set out in vol. 111 of the transcript at p. 44, and this was in answer to a question by Mr. Shoniker. She said:

> "He ..."

meaning Mr. Crossingham,

> "... indicated that he was aware that I had been appointed to the Police Commission and that — he said that he didn't know if I was aware or not but his partner, Ron Brady, was very familiar with the Niagara Regional Police Force and in fact had acted frequently for the Niagara Region Police Association and that, in his opinion, Ron Brady was the best versed of all members of the bar in Niagara with respect to the *Police Act*.

> And he suggested that it would be a good idea for me to sit down with him at some point in time, if I was willing, and talk to him about some of the background with respect to the Force and the *Police Act*.
>
> And when he said this, he said, 'would you be interested in meeting with him? I think you should.' And I said, 'Certainly, I would,' and he said, 'Fine, I'll set up such a meeting'."

I might say that in outlining the evidence on this application, which was given over the course of some four days, I intend to quote rather extensively from the transcript which sets out the evidence more accurately than I might do by way of paraphrasing it. Mr. Kelly has also pointed out a number of relevant passages which I am taking into consideration without repeating them, unless I do so inadvertently.

On January 22, 1986, a week after her appointment as Commissioner, Mr. Crossingham met Mrs. Taylor in Bench, Keogh's offices and took Mrs. Taylor to Mr. Brady's office where he introduced her to Mr. Brady and then left them to discuss police matters. The meeting lasted an hour or more.

> Mrs. Taylor says that Mr. Brady started off by saying:
>
> "I don't know why I'm doing this. I feel a bit uncomfortable, but I hear you're sincere and dedicated and therefore I'll talk to you and tell you things about the Police Force because I don't think you realize what you ended up getting yourself into."

And then he went to say something to the effect that you're out of your depth because of the serious problems in the Force.

At vol. 111, p. 64, Mrs. Taylor in answering a question by Mr. Shoniker said:

> "Well, he made reference to the fact that he was - had represented frequently the Police Association in legal matters and that he was prepared to provide me with information but it was to be provided in the strictest of confidence and it was only on the understanding that I would not quote him and that I would not divulge the information that I was giving him - or at least the source of the information that I was getting from him.

Q. And ---

A. And I agreed."

The meeting proceeded with Mr. Brady outlining some of the problems he was aware of, and at p. 124 of that same vol. 111, Mrs. Taylor was asked by Mr. Fedorsen:

> "After he gave you the information, did you ask his advice as to what you were supposed to do with the information?
>
> A. He had, I guess, volunteered his advice on what I should do with the information because as I mentioned, part way through when he had given me some of the information, I had verbally blurted out (more or less thinking out loud).'I don't know what I am going to do with this information,' or 'I don't know what I should do with this information.' And his response was 'I'm not providing you with this information so that you will do something with it. I don't want you to do anything about it. You shouldn't be doing anything with this information. I am telling you, because you don't realize how serious this matter is, how deep the corruption is, and if you try to do something about it you won't get anywhere.'
>
> Q. When you heard that advice, did you think you were getting at that point advice from a lawyer, or from somebody on the street, in your own mind?
>
> A. I certainly knew he was lawyer. I don't think, quite honestly, Mr. Fedorsen, that I turned my mind to whether or not I was getting a legal opinion from a lawyer. He was advising me not to do anything about it."

And at p. 79 of the same volume, during Mrs. Taylor's evidence, she was asked by Mr. Shoniker:

> "Q. All right. Did you speak to him about what happens at Board of Commission meetings at an administrative level?
>
> A. No, I - well, the only thing that I know of a procedural, administrative nature that he brought to my attention was that

with respect to the Complaints Procedural ByLaw that we had as a Board, and indicated that we had some serious problems with that, and he alerted me to them. One in particular.

Q. How did this meeting end on or about the 22 of January? When I say, how did it end, I mean to ask you what words were exchanged as you left, if you can recall those words, what understandings you felt you had, if you had those understandings?

A. I think it was repeated again that it was - the discussion had taken place in complete confidence, and I don't recall too much about how it ended specifically."

It is apparent from Mrs. Taylor's evidence that the confidential information being given, was given from Mr. Brady to Mrs. Taylor, since as she said, after less than a week as a Commissioner, she had no information to impart.

At p. 174 of vol. 111, she is asked the question:

"Did you ask him about it or did he just start talking about it?

A. All I - well, perhaps I could just clarify something for you, Mr. Miller. You have used the word discussion many times. I wouldn't phrase it that way. I wouldn't describe it as a discussion. It was a dialogue primarily one way, and it was from Mr. Brady to me. I had very little to say."

And at p. 107 of the same volume - at this point she is being asked questions by Mr. Kelly, and after he had asked her, and he had already read this, about the question of solicitor and client privilege, she had said:

"It really didn't enter my mind whether it was privileged or not."

And she was asked the question:

"In terms of your chat with Mr. Brady on January the 22, or whatever day it was, in 1986, was this a matter of Brady disclosing matters that he thought were confidential to you, as op-

> posed to you disclosing matters that you thought were confidential to him?
>
> A. Oh, I really didn't have anything of a confidential nature that I could have disclosed if I had wanted to at that point. I was a matter of days on the Board. I had really had nothing to tell him."

Subsequently, on the advice of two unnamed lawyers, Mrs. Taylor passed along all the information she had received from Mr. Brady to Sergeant VanderMeer in October or early November, I believe, of 1986, and repeated in some less detail to Inspector Newburgh and Sergeant VanderMeer in February of 1987, when the Internal Investigation Team was launched.

Sergeant VanderMeer was called to outline his relationship with Mr. Brady. He stated that Mr. Brady had acted as his solicitor from time to time over a period of some years, I believe, and on one occasion he had Sergeant Peressotti, a fellow Niagara Regional officer, and they together had attended on Mr. Brady for advice as to whether they would be subject to Force disciplinary action if they assisted a secret Ontario Provincial Police investigation into allegations of wrongdoing involving members of the Niagara Regional Police Force and others, without Peressotti and VanderMeer first notifying their superior officers of their assistance to that investigation.

On being assured by Mr. Brady that the most they would get would be a slap on the wrist because the probative value would outweigh the prejudicial value of what they were doing, they told Mr. Brady some details of the Ontario Provincial Police operation and requested his assistance as a go-between in delivering to the Ontario Provincial Police a package containing audio tapes and memoranda re the operation.

Mr. Brady agreed. The sealed envelope was delivered to him, and Sergeant Joyce, the Ontario Provincial Police officer in charge of the investigation, picked it up from Mr. Brady in Mr. Brady's office. Sergeant Joyce, who should know, states that this was Mr. Brady's only involvement in the investigation.

It seems to me that referring to Mr. Brady's gratuitous action in passing along a sealed envelope to assist a secret investigation by an outside police agency was a public duty he could not have refused, and to refer to his action as making him a "major player," as apparently Mr. Stephen Sherriff told Mrs. Taylor had been the case, and that he was thus in a position of conflict of interest, is a submission that I cannot accept.

Mr. Brady charged no fee for the advice to Peressotti, nor for the delivery of the package. Sergeant Peressotti says he later passed on to Sergeant Melinko and Constable Onich of the Internal Investigation Team, Mr. Brady's advice regarding the probative value outweighing the prejudicial value and it was submitted that this was another position of conflict.

Another witness that was called was Ted Johnson, the Administrator of the Niagara Regional Police Association, and he testified that following Mrs. Taylor's appointment to the Police Commission, he asked Mr. Brady whether he knew Mrs. Taylor, and Mr. Brady indicated that although he didn't know her personally, he was meeting with her very shortly thereafter.

Mr. Johnson stated he was interested in the personality of the new Commissioner and asked Mr. Brady to discuss with her the Association's concern regarding the Citizens' Complaint Procedure to find out what her position on that was and to give him some details of her background, her likes and her dislikes.

In February of 1987, following Chief Gayder's suspension by the Board of Police Commissioners, Acting Chief Shoveller, as already mentioned, ordered an internal investigation into wrongdoing in the Force. Sergeant VanderMeer was effectively in command of the Team and Constable Onich and Sergeant Melinko were amongst the members.

In the fall of 1987, the Attorney General, or his Department, ruled that the Internal Investigation Team's Report on wrongdoing in the Force revealed no reasonable and probable cause for charges to be laid. The Board of Police Commissioners was dissatisfied with this and demanded a Judicial Inquiry. This Inquiry resulted.

The phase of the Inquiry we are attempting to get started will look into the operation of the Internal Investigation Team.

Mr. Shoniker, on behalf of the Board and Mrs. Taylor, submits that on the evidence Mr. Brady stands in the position of having had a limited solicitor-client privilege in relation to Mrs. Taylor arising out of her association with his partner, Mr Crossingham, and Mr. Brady's meeting with her on January 22, 1986. He submits that this places Mr. Brady in a position of conflict in relation to Mrs. Taylor and that Mr. Brady should not be allowed to cross-examine her on this phase of the Inquiry.

He submits that the fact that neither Mr. Brady nor Mr. Crossingham billed her for legal fees is not important. I agree that it is not an overriding factor, but it is certainly a factor to be considered. Lawyers in a strict solicitor-client relationship seldom render services for which they expect to be held responsible without charging a fee. Nevertheless, a solicitor-client relationship can certainly arise without fees being expected or paid, depending on all the circumstances.

Mr. Shoniker states unequivocally that he accepts the fact that Mr. Crossingham passed none of Mrs. Taylor's information, given to him, Mr. Crossingham, on to Mr. Brady, and that he makes no submission that there was any breach of confidence or mischief in that respect.

If I understand Mr. Shoniker's submission, it is based on the appearance of a conflict or conflicts arising out of Mr. Brady's January 22, 1986, meeting with Mrs. Taylor and also his involvement, as already outlined, with Sergeant VanderMeer, Constable Onich, Sergeant Melinko of the Internal Investigation Team, and Sergeant Peressotti, who is not such a member.

Mr. Shoniker refers to Commentary 13 on Rule 5 of the Law Society Rules of Conduct, which was extensively referred to in the former application by Sergeant Melinko and Mr. Onich and others:

> "A lawyer who has acted for a client in a matter should not thereafter act against the client in the same or any related matter, or when the lawyer has obtained confidential information from the party in the course of performing professional services."

Mr. Shoniker emphasizes the confidential information part. It is obvious that no confidential information was received by Mr. Brady from Mrs. Taylor. Mrs. Taylor herself makes it clear that she had no information, confidential or otherwise, to impart.

Mr. Shoniker does, however, submit that Mr. Brady received confidential information from Sergeant Peressotti and Sergeant VanderMeer in relation to the Ontario Provincial Police investigation.

It is true that Sergeant VanderMeer stated he felt betrayed by the fact that he considered that Mr. Brady had earlier encouraged him to seek out wrongdoing in the Force, and then he had later heard that Mr. Brady had accompanied Mr. Johnson of the Police Association to see the Attorney General in order to protest the manner in which the Internal Investigation was being carried out, although there is no direct evidence that that meeting occurred. But assuming for the moment that it did, I am not satisfied that it represents a conflict on the part of Mr. Brady, and certainly not one that Mrs. Taylor can complain about.

In any event, because of his association with Sergeant VanderMeer in other matters, Mr. Brady has undertaken not to cross-examine Sergeant VanderMeer and, for that matter, Constable Onich, or Sergeant Melinko, apart from making some submissions regarding the latter.

In addition, I have already found that Mr. Brady has no conflict in relation to Constable Onich and Sergeant Melinko, nor can I see that Sergeant Peressotti's action in telling Constable Onich and Sergeant Melinko about Mr. Brady's advice concerning the probative value out-weighing the prejudicial value can establish some conflict between Mr. Brady and them. And I think it's significant that that was not suggested by their counsel in her earlier application on their behalf.

Mr. Shoniker submits that there is proof of conflict in that Mr. Brady, "walked into the meeting with Mrs. Taylor on January 22, 1986, with an agenda from the Police Association." He submits that for Mr. Brady to "spy" on Mrs. Taylor without advising her of his "agenda" from the Association was unethical and a conflict.

A request from the Police Association administrator to Mr. Brady to discuss with the new board member the Association's concern about the Citizens' Complaint procedure and to afterwards let him know what the new member was like is not what I think of as an agenda, and it seems to me to be a perfectly natural action on the part of both Mr. Johnson and Mr. Brady. Mr. Brady did tell Mrs. Taylor that the Police Association saw problems relating to the Citizens' Complaint procedure and she was well aware that Mr. Brady felt some discomfort in talking to her while representing the Association, but nevertheless he told her he felt he should apprise her of some of the Force problems.

I do not find it unnatural or unethical that he failed to tell her that Mr. Johnson was interested in finding out what the new member was like.

Surely, it is almost predictable that impressions about a new face on the Board would be sought out by the persons the Board employs. It probably happens with every new employer and I just don't see what possible breach of duty or confidence can be ascribed to that. To characterize this as "spying" is to inflate the situation out of all rational proportion.

I have considerable difficulty with the further submission that there is a conflict on Mr. Brady's part because Mrs. Taylor, in spite of Mr. Brady's repeated assertions that the information he gave was in strict confidence, nevertheless gave that information, as well as information from other sources, to Sergeant VanderMeer and later, in lesser detail, to Inspector Newburgh.

The submission is that this might have affected the manner in which the internal investigation was conducted and accordingly it would be unfair for Mr. Brady to cross-examine Mrs. Taylor in the internal investigation phase. Mrs. Taylor was, of course, not a member of the Internal Investigation Team.

How Mr. Brady can be in conflict of interest in relation to Mrs. Taylor because she passed information given her in strict confidence by Mr. Brady is a leap in logic I simply cannot follow. It is true that she says she considered it wasn't a breach of confidence so long as she did not disclose the source to be Mr. Brady.

There is nowhere in her evidence the slightest suggestion that Mr. Brady suspected she would pass on this information to VanderMeer who, in any event, states that he already had that information apart, perhaps, from some information about one Augustino. The fact is that on Mrs. Taylor's evidence, Mr. Brady told her he did not want her to do anything with the information and warned her against using it.

I cannot see how Mr. Brady can be blamed, therefore, for having somehow affected, if there was an effect, upon the internal investigation.

The Police Association has made it very clear that it is insisting on its right to select a counsel of its choice and that choice is Mr. Brady. I have in my ruling on the Onich, Melinko, etcetera, an application of a week ago cited what I consider to be the relevant law on disqualification and I shall not repeat it except to again quote Mr. Justice Dubin's observation in *Regina v. Speid*:

> "In assessing the merits of a disqualification order, the court must balance the individual's right to select counsel of his own choice, public policy and the public interest in the administration of justice and basic principles of fundamental fairness. Such an order should not be made unless there are compelling reasons."

There has not been shown to me any information received by Mr. Brady from Mrs. Taylor that would give Mr. Brady any unfair advantage in cross-examining Mrs. Taylor. Nor was there shown to be any information given by Sergeant Peressotti or Sergeant VanderMeer to Mr. Brady that would give such an advantage even if such a fact were relevant on an application in relation to Mr. Brady's relationship with Mrs. Taylor. To use the language of the decided cases, I am at a loss to "find any real mischief or real prejudice which in all human probability will result" if Mr. Brady is allowed to act.

Nor do I see any unfairness arising out of Mr. Brady continuing to act since the evidence does not disclose any confidential information that Mr. Brady received from Mrs. Taylor which might be used against her.

It has been urged upon me that if enough connections between Mr. Brady and members of the Force can be shown, even though no one connection is very telling in relation to conflict of interest, nevertheless, the sheer weight of a number of such connections can somehow amount to proof of a conflict or, as someone said, that Mr. Brady had too many irons in the fire and this might give a poor impression to the public.

That is a novel assessment that I do not accept. As Mr. Kelly might say, "A half a dozen swallows don't make a summer."

In considering what evidence is admissible or compellable in an Inquiry such as this, it must be born in mind that very different considerations apply than those in a regular trial. Hearsay, rumours and allegation that would never be allowed in a trial must be considered for what they are worth in an Inquiry.

The rules of civil procedure, the rules set out in the Law Society's Professional Conduct handbook and in the Canadian Bar Association's Code of Professional Conduct were formulated for private litigation where there is no obligation to volunteer information to an opposite party.

A Commission issued under the *Public Inquiries Act* to seek out information for a public purpose and in a matter of public concern is a very different forum. There is also, of course, a fundamental difference when we consider conflict in relation to a witness rather than a party. There are no parties here.

Nevertheless, I consider that the rules I have referred to do provide guidelines that I should keep in mind. Nevertheless, all Government ministries, boards, agencies and Commissions are required in express terms under the Order in Council to assist the Commissioner, that is, myself, to the fullest extent.

Such Commissions include Police Commissions and Commissioners and members of the force which the Police Commission administers.

In a public inquiry there is an obligation on all witnesses to tell what they know of the subject matter regardless of their allegiances. If Mr. Brady is in a better position because of his special knowledge to bring out information important to this Commission, then that is an advantage to the Commission.

It is clear, however, from Mrs. Taylor's evidence that she did not contribute to his knowledge because on January 22, 1986, she was too new at the job to have any knowledge to impart. How then can Mr. Brady be in a position of conflict so far as Mrs. Taylor is concerned?

If Mrs. Taylor has information that is relevant she is duty-bound to volunteer it as a member of the Police Commission regardless of the fact that she may feel that Mr. Brady should not be permitted to ask her about it.

There must be a compelling reason to deprive the Police Association of the counsel of its choice and I find no such reason. I see no advantage in the cross-examination of Mrs. Taylor which Mr. Brady has obtained through his meeting with her, no appearance of unfairness if he is permitted to continue to act for the Police Association, and I find no conflict of interest in relation to the applicant, and the application is accordingly dismissed.

Ruling of February 20, 1990: Production of documents - Board minutes and tapes

(*Orally*) Counsel for James Gayder has applied for an order for production of all minutes of the Board of Police Commissioners from the date of the calling of this Inquiry to the present time, and all recordings, documents and tapes of any Board meetings, notes made by the Board members, copies of three legal opinions given to the Board in the fall of 1987, all correspondence in connection with this Inquiry, and for the filing as ordinary exhibits of Exhibits 49A to 49F, which are the internal investigation briefs which were given to the Attorney General in October of 1987.

There appears to be no objection to having the latter briefs made ordinary exhibits without restriction as to access and in accordance with the Inquiry policy of openness, I so order.

As to the production of the other items, leaving aside for the moment those referred to in Paragraph 5, that is, the three legal opinions, Mr. Collins and Mr. Pickering have argued very persuasively that the application has nothing to do with disclosure since the Order in Council specifically requires the Board to assist this Inquiry to the fullest extent and accordingly it is bound by Executive Order to produce whatever documents, etcetera, I, as Commissioner, on the advice of Commission counsel who know what is involved, consider to be relevant to this Inquiry.

They point out that there is no limitation in the Order in Council as to matters arising since the Order in Council was issued.

I agree with those submissions and in view of the repeated assurances by all counsel that everyone is interested in getting at the truth regardless of who it may hurt, and of leaving no stone unturned so that all questions may be answered once and for all, I am somewhat confused as to why we have spent more than two days arguing about the right to withhold information under solicitor and client privilege.

So far as the production of those items I referred to is concerned, I am assisted as to the form of the Order for Production of those items through Dr. Ratushny's statement during his submission of last Wednesday, February 14, 1990, which is at pp. 167 and 168 of the transcript, wherein he says:

> "I understand that the arrangement was that without waiving solicitor and client privilege, Mr. Shoniker was prepared to sit down with Mr. Kelly and to go over any items of interest to him in the minutes."

And I interjected and asked, "The minutes since?," and he said, "Since February," presumably February 1988, since that was what we were referring to. He said:

> "Everything - to go everything with him and if there was some document which Mr. Kelly judged should be introduced, Mr. Shoniker then would discuss that with him and go and discuss that with the Board to see what position the Board would take with respect to any particular document."

This procedure, in general, commends itself to me as a very practical solution, subject to Mr. Shoniker's objection of yesterday that it should not include any matters which he states to be covered by solicitor and client privilege.

I am by no means sure that a Board specifically covered by the Order in Council and the injunction therein to assist the Inquiry to the fullest extent has a right to claim privilege in the same way as ordinary witnesses may under Section 7 of the *Public Inquiries Act*, nor am I satisfied, if there is a right of the Board to claim privilege in spite of the Order in Council, that the privilege as claimed must be honoured without questioning its foundation.

It is my recollection of the law that if the privilege is challenged, it is up to the judge, or other finder of fact in law, to examine the grounds for the alleged privilege by examining the document in question and make a finding of privilege or no privilege.

However, I was unable to find the jurisprudence on that question last night, and since it will presumably be some time before counsel have occasion to examine the minutes, etcetera, in question, I am reserving my decision on the issue of production of the minutes upon which privilege is claimed.

But in accordance with Dr. Ratushny's proposal, and one that apparently had been put forward some time before his proposal, as to the other productions, I order that the materials referred to in the applications, Paragraphs 1 to 4, including notes of the Commissioners which have not yet been produced, because some of them have, shall be produced to Commission counsel and that they, or one of them, and counsel for the Board, or one of them, examine the material for relevancy and what is relevant will then be made available to other counsel and may be referred to at this Inquiry.

If counsel cannot agree as to whether any material is relevant, the issue will be referred to me for a decision. I do not consider it necessary to order production of the correspondence referred to in Paragraph 6 of the application. I shall in due course rule as to how an objection to produce on the ground of privilege is to be handled.

In any event, the procedure I have outlined should reduce any risk of other parties engaging in a fishing expedition and of the hearings being unnecessarily extended.

I probably should point out that had there not been the offer of the above compromise, I would have been unwilling to make an order restricting this Inquiry to matters arising only up to the date of the Order in Council.

A good deal of evidence has been led without objection as to improvements in procedures and policy of the Force instituted in the past two years. One of the Board members requested and was granted permission to speak at some length on the innovations and improvements made over the last couple of years.

At the workshops attended and participated in by Board members and counsel, the consultants all reported on recent and present conditions. Surely, I am not expected to ignore all that information.

As a further example, the new *Police Services Act*, 1989, will probably be in force by the time my report is completed. It provides, amongst other innovations, for a completely new and compulsory public complaints procedure to be instituted by all forces and that matter falls directly within one of our terms of reference.

It would simply make no sense to ignore that legislation and proceed to make useless recommendations amending the Niagara Regional Police Force's existing public complaints policy on the ground that this Inquiry is prevented from considering anything after March 25, 1988, the date this Inquiry was brought into being.

There remains the interesting issue of solicitor and client privilege in relation to the three lawyers' opinions referred to in Paragraph 5 of the application.

In *Solosky v. The Queen*, already referred to and to be found at [1981] SCR. 821, at p. 835, Mr. Justice Dickson quotes Master of the Roles Jessel's definition of privilege:

> "The object and meaning of the rule is this; that as, by reason of the complexity and difficulty of our law, litigation can only be properly conducted by professional men, it is absolutely necessary that a man, in order to prosecute his rights or to defend himself from an improper claim, should have resource to the assistance of professional lawyers, and it being so absolutely necessary, it is equally necessary, to use a vulgar phrase, that he should be able to make a clean breast of it to the gentleman whom he consults with a view to the prosecution of his claim, or the substantiating of his defence against the claim of others; that he should be able to place unrestricted and unbounded confidence in the professional agent, and that the communications he so makes to him should be kept secret, unless with his consent (for it is his privilege, and not the privilege of the confidential agent), that he should be enabled properly to conduct his litigation."

Later on the same page, Mr. Justice Dickson, as he then was, points out that there are exceptions to the privilege. Where the communication is not intended to be confidential, privilege will not attach.

On p. 839 of the same report, he goes on to point out that the concept of privilege has been broadened recently and states:

> "One may depart from the current concept of privilege and approach the case on the broader basis that (i) the right to communicate in confidence with one's legal adviser is a fundamental civil and legal right, founded upon the unique relationship of solicitor and client ..."

In *Descoteaux v. Mierzwinski*, which was referred to by Mr. Ducharme, to be found at 70 CCC (2d) at p. 385, the Supreme Court of Canada approves of the statement I just read and points out that once the privilege is established, if the privilege conflicts with another person's rights, the conflict should be resolved in favour of protecting the confidentiality.

It can thus be seen that the privilege, if established, is an important one to be protected, but it is the client's privilege and the client can waive that privilege if he wishes to do so.

Counsel for Mr. Gayder and Commission counsel raised the question as to whether the privilege has in fact been established, that is, whether the opinions obtained were in fact intended to be confidential or were intended, if favourable, to be used to publicly support the Board's position.

They point to a Board minute of October 22, 1987, which reads as follows:

> "BE IT RESOLVED THAT:-
>
> THAT WE HIRE TWO (2) solicitors to independently assess this report and the recommendations made by members of the Attorney General's Ministry as soon as possible and that they report back to this Board as to whether or not they support the recommendations from the Attorney General's Ministry and that they be privy to all documentation sent to said Attorney General's Ministry by the Internal Investigation Unit:
>
> and
>
> that we request that should we make a decision to release this publicly, what format would they recommend we use to release this information;"

Mr. Shoniker handed me copies of his letters dated October 27, 1987, on behalf of the Board.

Am I to refer to these matters other than as instructions to counsel?

MR. SHONIKER: I'm sorry, your Honour, I don't know what you mean.

MR. COMMISSIONER: The letters that you gave me? It's just a question of whether I quote from them. They are purported to be solicitor-client communications.

MR. SHONIKER: Oh, for the purposes of your Honour considering your ruling, of course, save and except the identity …

MR. COMMISSIONER: I've got them to hand back to you when I've finished.

MR. SHONIKER: Thank you, your Honour.

MR. COMMISSIONER: These letters are addressed to the three-counsel to be retained and are headed, "Privileged Solicitor-Client Communication." They are approximately identical in format and information, and they request the three solicitors to give an opinion on matters set out in the letters and Paragraph 5 of the letter, which doesn't refer to instructions, because I won't refer to those, states:

> "Solicitor-client privilege is being requested between you and Fedorsen/Shoniker. You should know that Fedorsen/Shoniker have been retained as counsel to the Board of Commissioners of Police for the Niagara Region. Our client has expressly directed that neither collectively nor individually do they wish to meet with you or know of your identity prior to the tendering of your opinion. Quite simply, they are interested in your objective view.
>
> Further, I am instructed that a decision has been received by Niagara Regional Chief of Police, John E. Shoveller, that no criminal charges will be laid against James A. Gayder in connection with any of the evidence or allegations which you are reviewing. Consequently you can be assured that your opinion will not be used to support any effort to prosecute Mr. Gayder pursuant to the *Criminal Code of Canada*. Further, having resigned from the Niagara Regional Police Force on March 4, 1987, Mr. Gayder cannot be prosecuted pursuant to the *Police Act*.
>
> You should also know that subsequent to the receipt and review of your opinion, our client may be issuing a public statement. I am instructed to assure you that your identity will not be made known in such a statement should it be issued.
>
> Further, you should know that our client may be urging the Province of Ontario to call for an inquiry into the activities of James A. Gayder. Should this request be made and should an inquiry be ordered, it is not beyond the realm of possibilities that your opinion

> would be made known to others. Although I cannot conceive of a situation wherein the focus of an Inquiry, should it be ordered, would go beyond an analysis, investigation and evaluation of Mr. Gayder's activities, neither we nor our client would have any control over the parameters."

It is obvious from those letters that the Board, through its solicitors, intended to create a solicitor-client privilege with each of the three lawyers. However, as Mr. Pickering points out, one does not create such a privilege simply by calling it one. There must be an expectation of confidentiality.

On the basis of the letters and the Board resolution of October 22, 1987, there could be a question whether the opinions obtained were in fact intended to be confidential or, rather, depending on whether the opinions confirmed the Board's views, were intended to be used to quote the Board's resolution to "make the Board's position public in the near future."

The question of confidentiality may also be called into question by the Board's action in sending Sergeant VanderMeer to deliver the five volumes of the Internal Investigation Team's briefs to the three lawyers, apparently with a view to his explaining the briefs to them individually over a period of several hours, and his memo to Deputy Chief James Moody of October 30, 1987, mentions that:

> "Mr. Black -- ,"

that is one of the lawyers.

> " – and I met from 1400 to 1800 hours. We discussed and examined most of the relevant material."

> And later he says:

> "Mr. Black said he would be completing his report over the weekend and that he wants me to attend at his office on Monday, November 2, 1987, at 1400 hours. At that time he wishes me to review the contents of the report to ensure that he has stated the evidence accurately."

Subsequently, it appears from other evidence that Sergeant VanderMeer gave considerable information to Sergeant Melinko regarding the contents of his discussion with the lawyers. Confidentiality thus seems questionable, as submitted by the Applicant and Commission counsel.

However, rather than making a finding as to whether there actually was a privilege, I wish to consider the question of waiver of the solicitor and client privilege as claimed. Sopinka and Lederman in their *Law of Evidence in Civil Cases*, in discussing such waivers, state at p. 182: "Two essential requirements must be present in order for waiver to be established. The holder of the privilege must possess knowledge of the existence of the privilege which he is foregoing and also a clear intention of waiving the exercise of his right of privilege. Although waiver may be expressly given, such cases are few. More frequent are those cases in which the waiver is by implication only. If the holder of the privilege makes a voluntary disclosure or consents to disclosure of any material part of a communication, then there will be a waiver."

The resolution of October 22, 1987, mentions the possible future publication of the Board's position. On October 26, 1988, Mrs. Denise Taylor delivered a three-page statement of the Board to the Regional council outlining the history of the Inquiry and the events leading up to it.

The statement commenced:

> "Thank you for the invitation to meet with you today. Although the Board of Commissioners of Police had asked for an informal *in camera* meeting, we have re-thought our position and have concerns that the public should have access to information. We would like this to be an open and public session."

It then briefly set out the history of the laying of *Police Act* charges against Mr. Gayder, his suspension, the discovery of a cache of 550 prohibited weapons, Mr. Gayder's resignation and the appointment of the Internal Investigation Team. It then goes on to say:

> "In June 1987, the Special Investigative Unit presented a six-volume report to Douglas C. Hunt, the Assistant Deputy Attorney General for Ontario. It was anticipated that Mr. Hunt would advise as to the appropriate charges to be laid. As the Board understands it, the Niagara Regional Police Force did not receive a response until October 15, 1987, when Mr. Hunt stated that, in law, there existed no reasonable and probable grounds to lay criminal charges in connection with the six-volume report. Shortly thereafter Chief Shoveller referred the

> matter to the Board for its consideration. The Board retained counsel and was advised to seek three independent opinions from senior counsel with experience in the field of criminal law. By early November, 1987, the Board was in receipt of these independent legal opinions which held, to varying degrees, that there existed ample evidence upon which various criminal charges could have been laid. It was at this time that the Board voted unanimously to request that the Solicitor General for Ontario appoint a Judicial Public Inquiry."

And then it goes on for two or three pages to explain other matters.

In *Smith v. Smith*, [1958] O.W.N. at p. 135, Senior Master Marriott states at p. 136:

> "... the plaintiff Thomas Smith by filing an affidavit setting out the gist of the conversations had between himself and his former solicitor thereby waived any privilege he may have had respecting such conversations.
>
> There was a dearth of authority on the point in our Courts, but in Wigmore on Evidence, (3d) at p. 214 of the supplement, recent American authorities are cited for the proposition that where a client voluntarily testifies as a witness to confidential communications made by him to his attorney, he thereby waives the privileged character of such communications and then both he and his attorney may be fully examined in relation thereto. This appears to be a proper and logical conclusion that should be applied and followed here. It seems to me that it would be most unfair to allow the plaintiff to base his application for relief on information he alleges was given to him by a solicitor, and then obtain privilege for such communication and thus prevent the defendant from checking the accuracy of the plaintiff's statement."

Along the same line, the Ontario Court of Appeal in *Harich v. Stamp*, 27 O.R. (2d) 395, at p. 400, stated:

> "In my respectful view, having regard to the evidence which had already been given, the learned trial Judge erred in holding that there has been no waiver of the solicitor-client privilege. Reference may usefully be made to *McCormick on Evidence*, (2d) (1972), p. 194:

> Waiver includes, as Wigmore points out, not merely words or conduct expressing an intention to relinquish a known right but conduct, such as a partial disclosure, which would make it unfair for the client to insist on the privilege thereafter."

It may be concluded from the resolution of the Board of October 22, 1987, that the Board in requesting opinions from the three counsel at least contemplated the possibility of using them to publicly state the Board's position on the Attorney General's report regarding criminal charges against Mr. Gayder.

By publicly quoting what the Board took to be the gist of those opinions, stated to be in consensus "to varying degrees," the Board waived any solicitor-client privilege it may have had and thereupon made it necessary in the interests of fairness, as set out in the cases quoted, to allow Mr. Gayder's counsel the opportunity of checking the accuracy of the public statement and of the information upon which the opinions were based.

I accordingly order that the opinions of the three counsel referred to in the statement of October 26, 1988, being Exhibit 50A, be produced and that counsel be permitted to examine witnesses as to the information upon which those opinions were based.

Ruling of March 5, 1990: Production of documents - Board minutes and tapes

(*Orally*) In my ruling of February 20, 1990, upon Mr. Pickering's motion for production, amongst other items, of certain minutes of the Board of Commissioners of Police for reasons then given, I ordered that the minutes be produced for inspection by Board counsel and Commission counsel, with the proviso that if they could not agree on relevancy the issue would be referred to me for decision.

In regards to matters on which there might be a claim of solicitor and client privilege, I suggested that the same procedure commended itself to me, that is, for me to examine the grounds for the alleged privilege by examining the minutes or document in question and there upon to make a finding of privilege or no privilege.

But I reserved decision on the issue until I had an opportunity to confirm what I thought was the jurisprudence in that regard.

There are remarkably few reported cases on the point and those that do exist concern mainly the merits of the privilege which is claimed, taking it for granted that the procedure would be similar to that in other situations where the question of admissibility is raised, that is, that the judicial officer will privately read the document in question, decide whether it discloses privilege, and if necessary and practical, edit any privileged portions.

In *Mancao v. Casino et al* 4 CPC, p. 161, Mr. Justice Steel, on appeal from a Master's decision on a claim of solicitor and client privilege, said at p. 163:

> "If the parties cannot agree as to the proper editing thereof, the Master shall edit them so as to remove any comment or remark that may be personal."

In *Mercaldo v. Poole*, 13 CPC, p. 129, in a similar appeal from a Master, Mr. Justice Steel made a similar ruling pointing out that he had read the letter in question and re-sealed it and decided that it was not privileged and remitted it to the master to edit it and the edited letter was then to be produced to the Applicant.

Casey v. The Queen, 30 CCC (3d) 498 is a 1986 decision of the Supreme Court of Canada concerning a claim of Crown privilege on certain cabinet documents. At p. 510 of that report, the Court quoted with approval from a House of Lords' decision in *Conway v. Rimmer*, where it held that the documents in question should be produced for inspection and if it was found that disclosure would not be prejudicial to the public interest, or that the possibility of such prejudice was insufficient to justify them being withheld, disclosure would be ordered.

It stated that it was the Court that must determine the balance to be struck between the public interest and the proper administration of justice and the public interest in withholding certain documents or other evidence. The Supreme Court of Canada then ordered disclosure of the documents for the Court's inspection.

I recognise that the principles applied to Crown privilege are somewhat different from those applicable to solicitor and client privilege, but the same procedure should apply for examining the documents to determine the nature and extent of the alleged privilege.

While, as I said in my ruling of February 20, I am not sure that a Board specifically covered by the Order in Council constituting this Inquiry has a right to claim privilege, if there is such a right, it is on the decided cases subject to this Tribunal's inspection of the document in question to determine if it is in fact privileged.

I accordingly order that upon production of the materials referred to in my ruling of February 20, as set out on p. 7 of vol. 160 of the transcripts of evidence of this Inquiry, if counsel for the Board claims solicitor and client privilege the issue will be referred to me for a decision and I will, if necessary, privately inspect the document in question in order to assist me in my decision as to its privileged nature and as to whether its weight and relevancy is sufficient to justify its production.

I have no intention of interfering with the confidentiality of the Board's internal administration unless the material is so directly relevant to the conduct of this Inquiry that its relevancy outweighs the prejudice to the Board's interest in maintaining its privacy. Such material, or such parts of it as may be ruled admissible by me, shall then be produced and made available for use in this Inquiry.

Ruling of July 8, 1991: Production of documents - Board minutes and tapes

(*Orally*) I believe that the last time we were here that we proceeded with Mr. Pickering's motion regarding production of certain tapes. I reserved my decision on that, and accordingly I will deliver my ruling now.

Because the motion was made *in camera*, and then the examination of certain tapes were made in completely private sessions, I will be going into some detail about the proceedings because I had undertaken to publicly set it out after being *in camera*, so long as I did not reveal anything that should not be made public. Quite frankly on that, I don't think there was anything that occurred that I needed to avoid mentioning in public.

On February 14, 1990, David Pickering (counsel for James Gayder) brought on a motion for an order directing the production, amongst other items, of all minutes of the Niagara Regional Board of Commissioners of Police, both public and confidential, from February 1987 up to the time of that motion, as well as all recordings by tape or otherwise of such meetings.

The Board refused to produce the materials and following argument on February 20, 1990, I ruled that materials (referred to above) be produced by Board counsel to Inquiry counsel for examination by both of them as to relevancy. I ruled that if these counsel could not agree as to the relevancy of certain material, the issue was to be referred to me for a decision.

On March 5, 1990, as a result of a further application to me, as I recall it, I further ruled that if Board counsel claimed solicitor and client privilege in relation to any item I that I had ordered to be produced, and Commission counsel did not agree with that claim, then the issue would be referred to me for a decision, in the same way as that regarding relevancy.

There was considerable delay in the production of some of the tapes in question, since it appeared that some tapes that were requested had either never existed, or had been lost. In particular, Commission counsel was asking for tapes of the Board meetings of October 22, and November 5, 1987, and August 18, 1988. A number of letters and telephone calls were exchanged between counsel for the Board and counsel for the Commission.

Eventually, on February 7, 1991, tapes for October 22, 1987, and three of the four tapes (I believe tapes N°. 1, 2, and 4 of the November 5, 1987, meetings) were turned over to the Inquiry investigators for delivery to Commission counsel, with the information that the middle tape of the November 5, 1987, meeting could not be located and that as far as could be ascertained, the tape for the August 18, 1988, meeting had either been mislaid or had never existed, because the meeting may not have been taped.

Following an exchange of letters and telephone calls between counsel, Board counsel on March 19, 1991, advised Commission counsel that several other tapes that had been requested were available, and suggested that he and Commission counsel sit down and examine for relevancy of the contents of the tapes that were available. Commission counsel replied that there was little point to this until the missing tape of November 5, 1987, and the missing tapes from the August 18, 1988, meeting were located which would enable him to consider the relevancy of all the tapes as a whole. However, with the date for final submissions fast approaching, and the missing tapes not having been located, on April 22, 1991, Commission counsel wrote to Board counsel advising of the portions of the available tapes and minutes which he wished to produce at the Inquiry hearings, and reserving his rights regarding the missing tapes if they did turn up and if there were in fact such tapes.

On April 27, 1991, Board counsel orally advised Commission counsel that he was seeking further instructions from the Board of Commissioners of Police. Eventually Board counsel advised that the Board objected to the production of any of the materials requested. On June 25, 1991, Commission counsel and Board counsel appeared before me *in camera*. Commission counsel applied for a ruling as to the admissibility of the available tapes and minutes that he wished to produce in public.

The first of these was a tape entitled "Denise R. Taylor, '87/04/06, Statement Gayder events '86 and '87." This was a lengthy taped statement made by Denise Taylor, apparently sometime early in 1987. At the outset Mrs. Taylor is heard stating that it is a draft of a report that she intended to submit to the Niagara Falls Chamber of Commerce. I have listened to the tape and obviously that part of it was not part of her statement on the date in question, and her statement was apparently recorded over a previous report she had dictated regarding the Niagara Falls Chamber of Commerce statement she wished to make.

The tape, as I heard it, is apparently Mrs. Taylor's recollections, experiences, and impressions relating mainly to James Gayder during her first year as Board member. It is almost a duplicate of the typed will-say statement of Denise Taylor, which commences:

> "The following is a statement made by myself, Denise Taylor, at the request of Sergeant VanderMeer ..."

And it goes on, in very, very similar and sometimes identical statements to those that were contained in the tape I have just referred to. That will-say statement is found as Exhibit 314.

As a matter of fact, at the very beginning of the tape after the remarks about the Niagara Falls Chamber of Commerce, there is a great jumble of noises and voices. Obviously the tape was being set up for a statement, and Sergeant VanderMeer's name is clearly heard. At intervals during Mrs. Taylor's statement, a voice in the background can be heard, the voice resembling that of Sergeant VanderMeer. In Sergeant VanderMeer's note book for February 20, 1987, which is filed as Exhibit 317B, at p. 11, he has written: "Note: re. possible taping of Denise's story."

Accordingly, I can only conclude that the tape formed the basis for the statement produced as Exhibit 314, that is, the will-say statement.

Mr. Shoniker, on behalf of the Board, objects to the production of the tape because it was made privately and not for Board purposes, and is privileged as being made in contemplation of litigation for the purposes of instructing counsel. When asked how the Board could claim solicitor and client privilege (which is a very personal privilege) on behalf of Mrs. Taylor, Mr. Shoniker stated that although Mrs. Taylor purposely did not attend the meeting which instructed Mr. Shoniker against the production of the tapes, nevertheless, she had given permission to the Board to claim her privilege.

I am by no means satisfied that one can assign such a personal privilege, but in view of my other conclusions, it is not necessary to come to a decision in that regard.

When asked what litigation was contemplated that gave rise to the claim of privilege, Mr. Shoniker simply replied that the issue had not been addressed when he received instructions from the Board. I received no further information in this regard, and under the circumstances I can find no basis for a claim of solicitor and client privilege. I am satisfied the tape was made as the basis for the will-say statement prepared by Sergeant VanderMeer and filed as Exhibit 314, and that, to my mind, was not prepared for the purpose of litigation. The taped statement is relevant for the same reason the will-say statement, itself, is relevant (there was never any argument about that) as being background information about the circumstances that led up to the filing of *Police Act* charges against then-Chief James Gayder, which was an important part of the reason for the subsequent call for this inquiry. I accordingly rule that the tape in question and the transcript of it be produced and made an Exhibit in this Inquiry.

The second item in issue is an extract from the transcription of a tape of the Board's *in camera* meeting of October 22, 1987. The Internal Investigation Team had prepared a critique of the comments made by officials from the Attorney General's department concerning the Internal Investigation Team's six-volume report, which had been filed with the Attorney General's department, and is also filed as an Exhibit here. Copies of the critique, which is now filed as Exhibit 56, were distributed at the October 22, 1987, Board meeting and Chief Shoveller was asked to explain it and answer questions about it, which he did.

Mr. Shoniker for the Board, in his argument, objected that the transcript was not relevant, and its contents were outside the jurisdiction of this inquiry.

During the course of this Inquiry, it has been apparent that the Board was extremely upset by the conclusions reached by the personnel at the department of the Attorney General, to the effect that criminal charges against Mr. Gayder were not warranted, to the extent that it commissioned opinions from three separate lawyers who were asked to examine the Attorney General's conclusions. After receiving these opinions, the Board called for this Commission of Inquiry.

There have been questions raised in the media as to the necessity for this Inquiry, and a good deal of evidence has been admitted in that regard. I consider that the Board's discussions of the critique which has already been the subject of considerable evidence is quite relevant to a consideration of the circumstances resulting in the calling of this Inquiry. Such a consideration is within the Inquiry's mandate to report on the factors which caused the public to lose confidence in the Force. I assume that Mr. Shoniker's reference to lack of jurisdiction refers to the examination of the transcripts of *in camera* meetings of the Board. I have already ruled in my February 20, 1990, ruling that that is within my jurisdiction and I accordingly order that the transcript of the Board's October 22, 1987, meeting, pages one to 47 (which is all that were applied for by Commission Counsel), be admitted in evidence.

The third transcript in issue is that portion of a May 28, 1987, meeting contained in the Board transcript of that meeting, pp. 12 to 23. This portion of the transcript covers Acting Chief Shoveller's update, requested by the Board, of the progress of the Internal Investigation Team during its first three months of operation, and of a meeting held with the Attorney General. Mr. Shoniker submits that this is not relevant, and is beyond my jurisdiction. The Internal Investigation Team investigation has been extensively covered in evidence, and I consider the Board's attitude in that regard as relevant in the context of what prompted its later request for an inquiry, in order that I may better determine how the problems disclosed may be prevented or minimized in future. So I rule that pp. 12 to 23 of the May 28, 1987, transcript be admitted into evidence.

The fourth matter in issue is that Commission counsel proposes to put on the record a statement to the effect that the three available tapes from the meeting of November 5, 1987, reveal:

1) that a letter dated October 27, 1987, to the three lawyers referred to earlier, was read and approved by the Board.
2) that the Greenspan/Humphrey opinion gave the Board concerns and it was accordingly decided to closely question Sergeant VanderMeer as to documented facts to show prior ownership of Gayder's guns which would be so clear as to remove the case from prosecutorial discretion.
3) the balance of the discussion consisted in reading and commenting on two of the opinions, and that the only subjects discussed were Gayder, and guns, and property.

I have looked at the transcript of those tapes, and I am satisfied that most of it is not relevant. But I am satisfied that the statements just read fairly summarize the relevant portions of the three tapes of the November 5, 1987, meeting and as I recall Mr. Shoniker did not argue otherwise. For the reasons I have given in relation to issues N°. 2) and 3), I rule that the statements are relevant and within my jurisdiction and that they may be put on record as part of the evidence.

In addition to the above, Commission counsel proposed to put in as *in camera* evidence, an extract from the transcript of the May 28, 1987, Board meeting, pp. 34 and 56, relating to the trip to the Attorney General's department made by representatives of the Police Association to protest the manner in which the Internal Investigation Team's investigation was being conducted. He also proposes to put in, as *in camera* evidence, an extract from the transcript of the tape of the October 22, 1987, Board meeting, pp. 48 to 107, relating to a restructuring of the senior ranks of the Force.

I consider that a good deal of the information contained in these excerpts are within my mandate, and that it is relevant. But it is so intertwined with personnel information, that should not be made public, that I concur with Commission counsel's recommendation that it be admitted as *in camera* evidence, and I so rule. Only portions, of course, of those transcripts relating to matters concerning this Inquiry may be referred to by any counsel, and not the balance of those transcripts that deal with other personnel information.

Ruling of April 30, 1990: Ability of the Inquiry to examine potentially criminal conduct - the impact of the *Starr v. Houlden* decision

(*Orally*) Based on the decision in *Starr et al. v. Houlden*, delivered by the Supreme Court of Canada on April 5, 1990, counsel for Sergeant VanderMeer has requested a ruling on the effect of that decision on the present Inquiry and particularly on the phase of this Inquiry investigating the manner in which the Internal Investigation Team, of which Sergeant VanderMeer was a member, carried out its investigation in 1987.

In essence, his submission is that the investigation of the Internal Investigation Team's conduct has turned into a Preliminary Inquiry as to his, that is VanderMeer's, possible criminal conduct, namely, Obstruction of Justice in failing to disclose in the Internal Investigation Team's report to the Attorney General that, to his knowledge, the so-called Sacramento gun could not be the same gun as that found in ex-Chief Gayder's closet.

The identity of that gun was said to be a key feature of the Internal Investigation Team's case against Mr. Gayder.

Accordingly, he submits that the *Starr* decision prohibits such an investigation by this Inquiry. Some other counsel have supported this submission and have gone further to submit that the *Starr* decision prohibits this Inquiry from any finding of misconduct that might show criminality.

It has been apparent throughout this Inquiry that from the inception of the Niagara Regional Police Force on January 1, 1971, the Force has been beset by rumours, wide-spread throughout the Niagara Peninsula as well as within the Force itself, of police misconduct, illegal conduct, inappropriate conduct, negligence, mismanagement, illegal wiretapping and connections with organized crime.

Several investigations by outside police agencies resulted without charges being laid and the public's confidence in the Force deteriorated considerably over the years. Press releases setting out the conclusions of the investigations were issued but the reports themselves were not made public.

In early 1987, then-Chief Gayder retired following the laying of three and the drafting of several other police charges against him and for some seven or eight months thereafter an Internal Investigation Team of the Force investigated the possibility of criminal charges against the ex-Chief.

Six or seven volumes of evidence and submissions were delivered to the Attorney General who, in October 1987, advised that his department did not consider there was sufficient evidence to lay charges, that is, criminal charges.

The Board of Police Commissioners then petitioned the Solicitor General for a Public Inquiry and an Order in Council ordering the present Inquiry was issued on March 25, 1988.

At the outset, it might be useful to quote the preamble to the present Inquiry's Order in Council, and to summarize the terms of reference. The Order in Council orders that:

> "Whereas concern has been expressed in relation to the operation and administration of the Niagara Regional Police Force and whereas the expression of such concerns may have resulted in a loss of public confidence in the ability of the Force to discharge its law enforcement responsibility and whereas the Niagara Regional Board of Commissioners of Police has asked the government of Ontario to initiate a public inquiry into the operation and administration of the force and whereas the government of Ontario is of the view that there is a need for the public and members of the force to have confidence in the operation and administration of the force and whereas it is considered desirable to cause an inquiry to be made of these matters which are matters of public concern, now therefore pursuant to the provision of the *Public Inquiries Act*, R.S.O. 1980, Chapter 411, a Commission be issued appointing the Honourable Judge W.E.C. Colter who is, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization, to inquire into, report upon and make recommendations with respect to the operation and administration of the Niagara Regional Police Force since its creation in 1971, with particular regard to the following;"

It then proceeds to set out 12 particular areas to be examined in addition to the general mandate already expressed, and I will attempt to summarize them.

They concern such matters as hiring and promotional practices, storage and disposal of seized property, policies regarding the use of police resources for private purposes, inappropriate management procedures, relations between the Force and the Board of Police Commissioners, reporting relationships between senior officers and the Board, internal reporting relationships within the Force, public complaints procedures, the propriety, efficiency and completion of any other investigations into the activities of the Niagara Regional Police Force (of which there have been several) by other police agencies, the action taken to correct problems identified by such investigations, the morale of members of the Force, whether the January 1, 1971, amalgamation of the area forces had beneficial results, relations with the news media and policies relating to release of information to the media, and the twelfth and last item I will quote in full since I will be referring to it later:

> "Improprieties or misconduct on the part of members of the Forces or other police agencies arising out of the matters herein enumerated."

Unfortunately, because the *Starr* decision is only three weeks old, I do not have the assistance of an analysis of the Supreme Court of Canada's *ratio decidendi*, which I am sure will be forthcoming from many legal authors in the near future.

Early in his judgement, delivered by Mr. Justice Lamer on behalf of the majority of the Supreme Court of Canada, he pointed out the limitations on a Provincial Inquiry. At p. 20 of his judgement he stated:

> "At the outset, it is worth noting that this Court has consistently upheld the constitutionality of Provincial Commissions of Inquiry and has sanctioned the granting of fairly broad powers of investigation which may incidentally have an impact upon the federal criminal law and procedure powers. At the same time, however, this Court has consistently held that the power of the provinces to establish Commissions of Inquiry is not constitutionally unlimited."

One of the limitations he referred to is that a province cannot create an Inquiry that in substance serves as a substitute police investigation and Preliminary Inquiry with compellable accused in respect of a specific criminal offence, thus putting the Commissioner, "in a similar position as a judge conducting a Preliminary Inquiry under Section 535 of the *Criminal Code*."

The judgement refers to the Supreme Court of Canada decision in *Faber v. The Queen* [1976] 2 SCR 9, where the Court held that the investigation of crime was only incidental to the predominant aspects of an inquest which were within the jurisdiction of the province, such as satisfying the public as to the cause of death, making the public aware of factors which put human life at risk and reassuring the public that the Government is acting to ensure that the guarantees relating to human life are duly respected.

Mr. Justice Lamer then says that the Court in *Faber* correctly examined the Coroner's Inquest, both in terms of purpose and effect, and concluded that it was not an improper invasion into criminal law and criminal procedure, having a primary purpose other than the investigation of whether a specific crime was committed.

Mr. Justice Lamer also referred to the Attorney General (Que) and *Keable v. the Attorney General* (Can.), [1979], 1 SCR 218, which involved a Provincial Inquiry into various illegal acts allegedly committed by police forces, including the RCMP, as well as specific acts of illegal entry, barn burning and theft, but no individuals were named.

Mr. Justice Lamer, noting that the *Keable* Court upheld the constitutionality of the Inquiry, stated at p. 25 of his judgement:

> "I also note that in *Keable*, the terms of reference of the Commission empowered it to investigate such specific 'illegal or reprehensible acts' so that it could make recommendations to ensure that those acts would not be repeated by the RCMP in the future. In that light, while the Commission no doubt was empowered to inquire into certain potentially illegal activity, the inquiry's focus was on the more general issue of RCMP methods of investigation and wrongdoing in that context, a matter within Provincial jurisdiction."

He then quoted Mr. Justice Estey in the *Keable* case as follows:

> "The investigation of the incidents of crime or the profile and characteristics of crime in a province, or the investigation of the operation of Provincial agencies in the field of law enforcement, are quite different things from the investigation of a precisely defined event or series of events

> with a view to criminal prosecution. The first category may involve the investigation of crime generally and may be undertaken by the invocation of the Provincial Inquiry statutes. The second category entails the investigation of specific crime, the procedure for which has been established by parliament and may not be circumvented by Provincial action under the general inquiry legislation, anymore than the substantive principles of criminal law may be so circumvented."

Mr. Justice Lamer then goes on at the bottom of p. 26:

> "The key, according to Estey J., was where to draw the line. While the Province is within its jurisdiction to investigate allegations or suspicions of specific crime with a view to enforcement of the criminal law by prosecution of particular individuals, it must do so in accordance with federally described criminal procedure and not otherwise as, for example, by the Inquiry process. Estey J. fleshed out this position in the following way, at p. 258:
>
> Where the object is in substance a circumvention of the prescribed criminal procedure by the use of the enquiry technique with all the aforementioned serious consequences to the individuals affected, the Provincial action will be invalid as being in violation of either the criminal procedure validly enacted by authority of s. 91(27), or the substantive criminal law, or both. Where, as I believe the case to be here, the substance of the Provincial action is predominant and essentially an enquiry into some aspects of the criminal law and the operations of Provincial and municipal police forces in the Province, and not a mere prelude to prosecution by the Province of specific criminal activities, the Provincial action is authorized under s. 92(14)'."

Mr. Justice Lamer then at p. 28, sums up the decisions as laying down that the Inquiry process cannot be used by a Province to investigate the alleged commission of specific criminal offences by named persons, since to do so would be to circumvent the criminal procedure which is within the exclusive jurisdiction of Parliament.

He then speaks of the dangers pointed out by Mr. Justice Martin of the Ontario Court of Appeal in *Hoffman-LaRoche Ltd* [1981], 33 OR (2d) 694:

> "What is important is that a finding or a conclusion stated by the Commissioner would be considered by the public as a determination and might well be seriously prejudicial if a person named by the Commissioner as responsible for the deaths in the circumstances were to face such accusations in further proceedings. Of equal importance, if no charge is subsequently laid, a person found responsible by the Commissioner would have no recourse to clear his or her name...
>
> "Further, it is a reasonable inference that a person intends the natural consequences of his acts and such a finding as that referred to against a nurse, in this case, would leave nothing further to be said to amount to a conclusion forbidden by the Order in Council."

Mr. Justice Lamer then considers the most recent decision of the Supreme Court of Canada in *O'Hara v. British Columbia* [1987] 2 SCR 591, holding that a Provincial Inquiry investigating alleged injuries sustained by a prisoner while in custody at a police station was constitutional. Crown counsel had ruled that lack of identification of the alleged assailant prevented criminal charges. A *Police Act* hearing had dismissed the complaint for lack of evidence. The Province then by Order in Council instituted a Commission of Inquiry:

> "To enquire into and report on all matters associated with the alleged injuries sustained by Michael Albert Jacobsen... and upon results of the internal police inquiry investigations and hearings following complaint by Mr. Jacobsen under the *Police Act*, and whether all relevant evidence was properly adduced and truthfully given at these inquiries and hearings. In particular, the Commission is directed to inquire, investigate and report on (a) all factors surrounding the detention of Jacobsen at the Vancouver Police Station on September 30, 1983, particularly the reason for and the period of detention, (b) whether Jacobsen sustained injuries while detained in Police custody, and if so, the extent thereof, the person or persons who inflicted them, the reason for so in-

> flicting them and the time and place the injuries were sustained, (c) whether any member of the staff of the Vancouver Police Force or any other person contributed to, or had or acquired knowledge of, Jacobsen's injuries, and if so, who were they, where and to what extent did each contribute to the injuries, or have or acquire such knowledge, (d) whether any police officer who had knowledge of perpetration of assault (if any) on Jacobsen took steps to protect him from injury, and if not, why not, and (e) all records of internal disciplinary investigations, legal proceedings and other inquiries which took place as a consequence of complaints by Jacobsen under the *Police Act* or by civil action against the Vancouver Police Force, and whether in the opinion of the Commissioner evidence was falsified, not adduced or suppressed at any of these investigations, proceedings and inquiries, and if so, to what extent and, where appropriate, by whom."

It is interesting to compare these terms of reference, referring to specific wrongdoing, with the very general terms of this present Inquiry as earlier quoted.

The police officers involved in the *O'Hara* Inquiry applied for an order declaring the Order in Council *ultra vires* the Province, and the trial and appeal judgements dismissing the application were further appealed to the Supreme Court of Canada.

Mr. Justice Lamer comments on the Supreme Court of Canada judgement, and then goes on to distinguish that case on the facts from the situation in the *Starr* Inquiry. I intend to quote at some length from Mr. Justice Lamer's observations on the *O'Hara* decision.

Commencing at p. 30 of his judgement, Mr. Justice Lamer states:

> "Finally, my analysis of judicial precedent ends with the review of the most recent decision of this Court in this area, *O'Hara v. British Columbia*. This case concerned a Provincial Inquiry investigating alleged injuries sustained by a prisoner while in custody at a police station ... The Chief Justice delivered the majority judgement of this court upholding the constitutionality of the inquiry.

In so doing, he explicitly recognized, at p. 607 that:

'A Province must respect federal jurisdiction over criminal law and criminal procedure.'

The Chief Justice agreed with the decision of Legg J. of the British Columbia Supreme Court who held that s. 92(14) authorizes a Province to establish an Inquiry to investigate and report on alleged wrongdoing committed by members of a police force under its jurisdiction."

In this respect he went on to hold at pp. 607-08 that:

"Section 92(14) not only authorizes the establishment of Provincial Commissions of Inquiry in certain circumstances, but also grounds Provincial jurisdiction over the appointment, control and discipline of municipal and Provincial police officers."

Furthermore, at pp. 610-11, the Chief Justice expanded on the grounds for holding the Inquiry to be within Provincial competence by placing the discussion in the context of general division of powers of adjudication:

"A matter may well fall within the legitimate concern of a Provincial legislature as pertaining to the administration of justice, and may, for another purpose, fall within the scope of federal jurisdiction over criminal law and procedure ... Such is the case in the present appeal ... A Province has a valid and legitimate constitutional interest in determining the nature, source and reasons for inappropriate and possibly criminal activities engaged in by members of police forces under its jurisdiction. At stake is the management of the means by which justice is administered in the province. That such activity may later form the basis of a criminal charge and thus engage federal interest in criminal law and criminal procedure, does not in my view, undermine this basic principle ... The present Inquiry is aimed at getting to the bottom of an incident of police misconduct which has undermined the proper administration of justice. The federal authorities have no jurisdiction over the discipline of the police officers who are the subject of the Inquiry ... The Inquiry is mandated to investigate alleged acts of wrongdoing for purposes different from those which underlie criminal law and criminal procedure. The purpose of the Inquiry is not to determine criminal responsibility. As such it is no different from a Coroner's Inquiry, the constitutionality of which was affirmed by this Court in *Faber, supra*'."

Mr. Justice Lamer continues at p. 31:

"In my view, this passage from the judgment of the Chief Justice reconciles to a large extent the cases that have gone before in this area, while adhering to well established principles of adjudication in the context of division of powers. the comments of the Chief Justice recognize that there may be a 'double aspect' to a Commission of Inquiry. There will be cases, however, where the Court is able to identify a predominant feature that outweighs the competing, incidental aspect.

In *Keable*, for example, while the Commission was empowered to investigate certain alleged criminal acts committed by police forces, its focus was on methods of police investigation, improprieties in relation thereto, and recommendations for ensuring that reprehensible acts were not repeated.

Similarly, in *O'Hara*, the Chief Justice identified, at p. 610, the 'management of the means by which justice is administered in the province' as the predominant feature of the inquiry.

Additionally, the Chief Justice in *O'Hara*, while upholding an Inquiry into a specific incident, the conclusions of which may have led to criminal charges, explicitly made clear that the Inquiry was *intra vires* the Province because it did not serve to affix criminal responsibility to a particular individual. Rather, it was more generally concerned with police misconduct. Of some note is the fact that in *O'Hara* a hearing under the *Police Act* in relation to the incident at issue exonerated the police of any wrongdoing. There was no on-going independent police investigation into possible criminal charges.

Finally, and in my view an element of the decision that is of great importance, is the following caveat found at pp. 611-12:

'A Province may not interfere with federal interests in the enactment of and provision for a uniform system of criminal justice in the country as embodied in the *Criminal Code*. An Inquiry en-

> acted solely to determine criminal liability and to bypass the protection accorded to an accused by the *Criminal Code* would be *ultra vires* of a province, being a matter relating to criminal law and criminal procedure. This limitation on Provincial jurisdiction is an acknowledgement of the federal nature of our system of self-government.'
>
> This limitation is reminiscent of the language used by Dickson J. (as he then was) in *Di Iorio* and that of Estey J. in his concurring reasons in *Keable*.
>
> In sum then, the decision in *O'Hara* speaks as much to the limitations on Provincial Commissions of Inquiry as it does to their breadth. The judgment is a clear affirmation of the view that the pith and substance of a Commission must be firmly anchored to a Provincial head of power, and that it cannot be used either purposely or through its effect, as a means to investigate and determine the criminal responsibility of specific individuals for specific offences."

In view of the approval of the *O'Hara* majority decision by both the majority and minority judgements of the Supreme Court in *Starr*, I propose to refer to some further comments of the Chief Justice in the *O'Hara* judgment. In doing so, for purposes of continuity, I may repeat some of the above quotations.

At p. 602 of *O'Hara*, the Chief Justice quotes Mr. Justice Legg, the trial judge, as follows:

> "In my respectful opinion, when the text of the whole Order in Council is examined in the context of the surrounding circumstances, the Inquiry which is authorized by the Order in Council may be fairly categorized as one which in pith and substance is an Inquiry into the administration of justice in the province."

And further, at p. 603, the Chief Justice quotes Justice Legg as saying:

> "I agree with counsel for the Attorney General that the Commission of Inquiry appointed by the Order in Council is a recommendatory not an adjudicative body. It will report

> findings to the Lieutenant-Governor in Council. It will make no determination as to guilt or innocence or civil or criminal liability. It cannot terminate the employment or otherwise discipline any person. Nor will its report necessarily lead to any subsequent proceedings against anyone. That being so, it cannot be said that the Inquiry will deprive any person of liberty or security of the person."

The Chief Justice also, at p. 603, quotes from Mr. Justice Seaton's judgement in the British Columbia Court of Appeal:

> "There was something very wrong at the Vancouver Police Station that night. Justice cannot properly be administered until what happened in this case is discovered, because only then can steps be taken to ensure that it does not happen again. As well, public confidence in the administration of justice is threatened by what has happened here. A public Inquiry is necessary so that the public will know that this matter is being dealt with. Incidental to the inquiry, evidence might be discovered that would lead to charges being laid. That possibility does not make the Inquiry *ultra vires*. I agree with Mr. Justice Legg. I would dismiss the appeal."

At p. 605, the Chief Justice approves of the above remarks in the following words:

> "Legg J. of the British Columbia Supreme Court indicated the general nature and effect of major cases on point, and in my opinion, correctly concluded that, despite parliament's exclusive jurisdiction over criminal law and criminal procedure, s.92(14), authorizes a Province to establish an Inquiry to investigate and report on alleged wrongdoings committed by members of a police force under its jurisdiction, and to enable such an Inquiry to conduct compulsory examinations of witnesses. I agree with the judgments of the British Columbia Courts."

At pp. 607-08 of the *O'Hara* judgement, the Chief Justice, referring to the *Constitution Act*, 1867, says:

> "Section 92(14) not only authorizes the establishment of Provincial Commissions of Inquiry in certain circumstances,

> but also grounds Provincial jurisdiction over the appointment, control and discipline of municipal and Provincial police officers. Such was recognized unanimously by this Court in *Keable* (2d). Beetz J. at p. 79 stated this principle in the following terms:
>
> The mandate of respondent commissioner is concerned not with the powers, duties and capacities of peace officers as determined by the criminal law, but with the manner in which they were in fact exercised in the circumstances described in the mandate. These are matters which fall within the administration of justice and which cover the discipline of police forces and their members... By the same reasoning, a Province can investigate the allegedly illegal or reprehensible behaviour of a police force within its constitutional jurisdiction, as well as the allegedly illegal actions of any police officer'."

The Chief Justice at p. 607 warns of the limitations on the province's powers which were later emphasized in the *Starr* decision. He points out:

> "It is true that the authority to establish such an Inquiry is not without limits. A Province must respect federal jurisdiction over criminal law and criminal procedure. For example, a Province may not compel a person charged with a criminal offence to testify as a witness before a Provincial Inquiry into the circumstances giving rise to that charge ... Nor may a Province enact legislation enabling a police officer to summon a suspect before an official and submit the suspect to a compulsory examination under oath with respect to his involvement in a crime solely for the purpose of gathering sufficient evidence to lay criminal charges ...
> Despite these limitations, however, the jurisprudence of this Court leaves little doubt, if any, that a Province in certain circumstances may endow Provincial Commissions of Inquiry with coercive investigatory powers."

He continues at p. 610:

> "A certain degree of overlapping is implicit in the grant to the provinces of legislative authority in respect of the ad-

> ministration of justice and in the grant to parliament of legislative authority in respect of criminal law and criminal procedure. A matter may well fall within the legitimate concern of a Provincial legislature as pertaining to the administration of justice, and may, for another purpose, fall within the scope of federal jurisdiction over criminal law and procedure ... A Province has a valid and legitimate constitutional interest in determining the nature, source and reasons for inappropriate and possibly criminal activities engaged in by members of police forces under its jurisdiction. At stake is the management of the means by which justice is administered in the province. That such activity may later form the basis of a criminal charge and thus engage federal interest in criminal law and criminal procedure, does not, in my view, undermine this basic principle.
>
> As the Attorney General of British Columbia submits, the present Inquiry is aimed at getting to the bottom of an incident of police misconduct which has undermined the proper administration of justice. The federal authorities have no jurisdiction over the discipline of the police officers who are the subject of the inquiry. There is no federal involvement in the actions of the Vancouver Police Force. The Inquiry is mandated to investigate alleged acts of wrongdoing for purposes different from those which underlie criminal law and criminal procedure. The purpose of the Inquiry is not to determine criminal responsibility ... As stated, there are limits to a province's jurisdiction to establish an Inquiry and equip it with coercive investigatory authority. Broadly speaking, those limits are two-fold in nature. First, a Province may not interfere with federal interests in the enactment of and provision for a uniform system of criminal justice in the country as embodied in the *Criminal Code*. An Inquiry enacted solely to determine criminal liability and to bypass the protection accorded to an accused by the *Criminal Code* would be *ultra vires* of a province, being a matter relating to criminal law and criminal procedure."

Mr. Justice Lamer sums up these limitations at p. 33 of the *Starr* judgement as follows:

> "In sum then, the decision in *O'Hara* speaks as much to the limitations on Provincial Commissions of Inquiry as it does to their breadth. The judgment is a clear affirmation of the view that pith and substance of a Commission must be firmly anchored to a Provincial head of power, and that it cannot be used solely, either purposely or through its effect, as a means to investigate and determine the criminal responsibility of specific individuals for specific offences."

Applying the principles of the jurisprudence to the *Starr* case, Mr. Justice Lamer concludes at pp. 33 to 34:

> "In my view, the Commission of Inquiry before this Court is, in pith and substance, a substitute police investigation and Preliminary Inquiry into a specific offence defined in s.121 of the *Criminal Code*, alleged to have been committed by one or both of the named individuals, Patricia Starr and Tridel Corporation Inc. That is not to say that an Inquiry's terms of reference may never contain the names of specific individuals. Rather it is the combined and cumulative affect of the names together with the incorporation of the *Criminal Code* offence that renders this Inquiry *ultra vires* the Province. The terms of reference name private individuals and do so in reference to language that is virtually indistinguishable from the parallel *Criminal Code* provision. Those same terms of reference require the commissioner to investigate and make findings of fact that would in effect establish a *prima facie* case against the named individuals sufficient to commit those individuals to trial for the offence in s.121 of the Code. The net effect of the inquiry, although perhaps not intended by the province, is that it acts as a substitute for a proper police investigation, and for a Preliminary Inquiry governed by Part XVIII of the *Code*, into allegations of specific criminal acts by Starr and Tridel Corporation. While public officials are involved within the scope of the inquiry, the investigation of them is defined in terms of whether they had dealings with Ms Starr or Tridel Corporation, and is therefore incidental to the main focus of the commissioner's mandate ...
>
> I note, once again, that a unique aspect of this Inquiry is that the appellants, Ms Starr and Tridel Corporation, are

> named in the terms of reference. This fact alone distinguishes the present case from the other cases this Court has had to decide. Furthermore, there seems to be a complete absence of any broad policy basis for the inquiry."

Referring to remarks by the Law Reform Commission of Canada that investigatory Commissions supplement institutions of government by performing tasks which these institutions may do less well, he says at p. 36:

> "This observation is certainly pertinent in the context of many Inquiries. In *Keable* and *O'Hara*, for example, both Commissions of Inquiry dealt with police misconduct, a matter that the criminal process may have difficulty dealing with because of the potential for conflict of interest."

In coming to his conclusion that the *Starr* Order in Council encroached upon the Federal Government's exclusive jurisdiction in criminal law, and so was *ultra vires* the Province, he states at pp. 37 to 38:

> "In my view, there are two key facts whose combined and cumulative affect, lead me to the conclusion that this Inquiry is in effect a substitute criminal investigation and Preliminary Inquiry.
>
> First, the only named parties are two private individuals, one being a corporation, who have been singled out for investigation. Unlike *O'Hara*, where the named individual was the victim of alleged misconduct, the present Inquiry names individuals who are the alleged perpetrators of the misconduct.
>
> Second, the investigation of these two named individuals is in the context of a mandate that, as recognized by the Court of Appeal for Ontario, bears a 'striking resemblance' to s.121(1(B)) of the *Criminal Code*."

He continues at p. 40:

> "It is not necessary for the commissioner to make findings of guilt in the true sense of the word for the Inquiry to be *ultra vires* the Province. It suffices that the Inquiry is in effect a substitute police investigation and preliminary inquiry into a specific allegation of criminal conduct by named private citizens. In my view, the investigation the

> commissioner is asked to undertake, and the findings of fact he will make as a result of his investigation, place him in a similar position as a judge conducting a preliminary inquiry under s. 535 of the *Criminal Code*."

At p. 42, he states:

> "There is no doubt that a number of cases have held that inquiries whose predominant role is to elucidate facts and not conduct a criminal trial are validly constituted even though there may be some overlap between the subject matter of the Inquiry and criminal activity. Indeed, it is clear that the fact that a witness before a Commission may subsequently be a defendant in a criminal trial does not render the Commission *ultra vires* the province. But in no case before this Court has there ever been a Provincial Inquiry that combines the virtual replication of an existing *Criminal Code* offence with the naming of private individuals while ongoing police investigations exist in respect of those same individuals."

At p. 45 he continues:

> "What a Province may not do, and what it has done in this case, is enact a public inquiry, with all its coercive powers, as a substitute for an investigation and preliminary Inquiry into specific individuals in respect of specific criminal offences ... In short, the present Inquiry circumvents the prescribed criminal procedure for conducting a police investigation and a preliminary inquiry."

He, accordingly, pronounces the Order in Council to be *ultra vires* the Province.

I must now attempt to extrapolate from the jurisprudence the principles which govern my jurisdiction under the Order in Council authorizing this Inquiry. In my view, the principles are set out in the two most recent Supreme Court of Canada decisions referred to above, namely, *O'Hara* and *Starr*, and I must decide what principles are relevant to the situation referred to explicitly or inferentially in the terms of reference directed to me.

An analysis of the judgement in *Starr* convinces me that all members of the court have confirmed the principles set out in *O'Hara*, although the majority has distinguished them from those applicable to *Starr* due to the factual differences between the two cases, and those principles exemplify what may be done and may not be done constitutionally.

In my respectful view, the principles to be derived from the two cases are as follows:

1. The pith and substance of a Provincial Commission must be firmly anchored to a Provincial head of power.

2. A Commission may have a "double aspect."

A matter may fall within Provincial jurisdiction as pertaining to the administration of justice, and may also fall within the scope of Federal jurisdiction over criminal law and procedure.

3. In deciding whether the terms of reference of a Commission of Inquiry, which have a "double aspect," fall within Provincial or Federal jurisdiction, one must attempt to identify a predominant feature that outweighs the competing incidental aspect. For example, a province has a legitimate constitutional interest in determining the nature and reasons for inappropriate conduct of members of police forces under its jurisdiction.

That the uncovering of such conduct may later form the basis of a criminal charge, and thus impinge on Federal jurisdiction over criminal law and procedure, does not oust Provincial jurisdiction, provided the predominant feature of the Inquiry is the management of the means by which justice is administered in the province.

4. In deciding what is the predominant feature of an inquiry, the Order in Council as a whole, but with particular attention to the preamble and the circumstances leading to the Inquiry, should be examined to ascertain whether there is a broad policy basis for the inquiry rooted in a Provincial head of power.

In my view, the *O'Hara* and *Starr* decisions stand side by side, both being judgements of Canada's highest court, neither being in conflict with the other because of their different factual foundations, and each providing rules which govern a particular type of Inquiry.

A commissioner of a Provincial Inquiry, by applying the principles set out above, must come to a conclusion as to whether the Inquiry in question falls within the description of the *O'Hara* Inquiry or the *Starr* Inquiry. If it falls within that of the *O'Hara* Inquiry, the Inquiry may proceed, applying the *O'Hara* rules. If it or parts of it fall within that of the *Starr* Inquiry, it or those parts of it are unconstitutional as falling within Federal jurisdiction.

Submissions by several counsel have been to the effect that the *Starr* Inquiry and the present Inquiry are sufficiently similar that the present Inquiry is prohibited from making any findings other than on broad general policies. Therefore, before applying the principles I have set out above, I should point out what I conceive to be some fundamental differences between the two Inquiries:

1. At p. 3 of his judgement, Mr. Justice Lamer quotes an excerpt from the Premier's statement announcing the Inquiry as follows:

> "I give you my personal assurance that those whose performance has been found wanting will be discovered, those who have erred will be punished, and those who have broken the law will be prosecuted."

At p. 36 he refers to this quote as forming part of his reasons for concluding that the Inquiry is a substitute for a criminal investigation. In the present Inquiry, no one in authority has made any suggestion of criminal prosecution arising out of the findings of the Commission.

2. At p. 34, Mr. Justice Lamer, as quoted earlier, notes a unique aspect of the *Starr* Inquiry to be the naming of two individuals in the terms of reference, which fact alone, "distinguishes the present case from the other cases the court has had to decide."

At p. 33, as already quoted, he states:

> "It is the combined and cumulative effect of the names, together with the incorporation of the *Criminal Code* offence, that renders this Inquiry *ultra vires* the Province."

Further, at p. 38, as quoted earlier, he states that in his view, two key facts lead him to conclude that the Inquiry is a substitute criminal investigation because:

1. Unlike *O'Hara*, two individuals are singled out for investigation as alleged perpetrators of the misconduct.
2. The wording of the mandate for the investigation of these two individuals bears a striking resemblance to the section of the *Criminal Code* making the alleged misconduct a criminal offence.

In the terms of reference of the present Inquiry neither of such factors is present.

3. At p. 34 of his judgement, Mr. Justice Lamer states:

> "Furthermore, there seems to be a complete absence of any broad policy basis for the Inquiry."

In the terms of reference of the present Inquiry, the broad policy basis is clearly set out in the preamble, which was quoted earlier, to the effect that there has been concern over the loss of public confidence in the operation and administration of the Niagara Regional Police Force and that it is desirable to inquire into these matters of public concern.

While the mandate of this Inquiry, as set out earlier, may be intimidating in its breadth and scope, it does not, in my view, justify in any way a finding such as that in the *Starr* decision at p. 45, that the Province has enacted this Public Inquiry as a substitute for an investigation and preliminary inquiry into specific individuals in respect of specific criminal offences, or to circumvent the procedure provided in Part XVIII of the *Criminal Code*.

A caveat may, however, be appended in relation to term of reference N°. 12, which refers to improprieties or misconduct, and to this I shall return later.

4. Mr. Justice Lamer appears to attach some significance to the fact that there was an ongoing police investigation separate from that of the Inquiry. There was no such ongoing investigation here.

I accordingly conclude that the circumstances surrounding the present Inquiry are readily distinguishable from those found by Mr. Justice Lamer to apply to the *Starr* Inquiry. The present Inquiry is much closer in its circumstances to those attending the *O'Hara* Inquiry, and I conclude that the remarks of Chief Justice Dickson in that case, which I have already quoted, apply to the present Inquiry.

Applying the principles I referred to earlier, I find that the pith and substance of this Inquiry is, "the management of the means by which justice is administered in the Province," and that this is a matter in which the Province has a valid and legitimate constitutional interest under s. 92(14) of the *Constitution Act*.

Although the terms of reference may have a double aspect, falling within Provincial jurisdiction over administration of justice as well as, incidentally, within Federal jurisdiction over criminal law and procedure, the predominant feature of the terms of reference, the preamble and the circumstances surrounding the calling of the Inquiry, is the Province's interest in the management of the means by which justice is administered in the Niagara Region.

I accordingly find the Order in Council to be constitutional.

That, however, is not the end of the matter. Counsel for Sergeant VanderMeer has submitted that the manner in which the Inquiry has examined the operations of the Internal Investigation Team which investigated alleged wrongdoings by ex-Chief Gayder while he was in office, amounted to a Preliminary Inquiry into alleged criminal conduct of his client.

A good part of the several months spent in examining the methods employed by the Internal Investigation Team has focused on whether the Team, effectually headed by Sergeant VanderMeer, knew or should have known that a series of briefs authored by Sergeant VanderMeer and delivered to the Attorney General, contained a number of errors, mis-statements or overstatements tending to show improper or criminal conduct on the part of ex-Chief Gayder.

Much attention has been concentrated on a handgun which the brief stated to have been found in Mr. Gayder's possession and to have been previously stolen. Just prior to the delivery of the briefs to the Attorney General, at least one of the members of the Internal Investigation Team learned that the gun had not been stolen and, according to him, told Sergeant VanderMeer. This has been denied under oath by Sergeant VanderMeer.

Counsel submits that the manner in which Commission counsel has presented the evidence in this regard, has indicated an intention to allege Obstruction of Justice on the part of Sergeant VanderMeer.

Commission counsel submits that that evidence is only part of an examination of the manner in which some investigators have operated, thus perhaps reflecting on the policies of senior management, and that he has no intention of suggesting criminal conduct on the part of any member of the investigation team.

He submits that the internal investigation, and the manner in which it was conducted, is clearly relevant to the mandate of this Commission and was partially responsible for its being called for by the Board of Police Commissioners and others.

Any suggestion of criminal conduct would, of course, be improper since I am specifically enjoined from making any finding of criminal responsibility, and I am satisfied that no such suggestion will be made.

There has, however, been evidence that members of the Force perceive some of the Internal Investigation Team members to be guilty of bias, intimidation and improper investigative techniques employed while interviewing various Force members, and I consider that a review of the methods used by the Internal Investigation Team forms part of my mandate to ascertain whether there has been a loss of confidence in the Force and to make recommendations to correct any defects in policy, training or methods of selecting investigators, and that that is justified within the principles laid down in *O'Hara*.

Other counsel have submitted that *Starr* precludes me from investigating the recurrent rumours that organized crime has infiltrated the Force since it might involve evidence of criminal wrongdoing on the part of individuals. I simply do not agree.

If this Inquiry is to restore public confidence in the Force, such a rumour must be investigated and the public must be told whether it is true or false. If an incident of such investigation is the discovery of criminal conduct, that incident falls squarely within the principles set out in *O'Hara*, that is the purpose of the investigation is not to determine criminal responsibility but to get to the bottom of alleged police misconduct, and the incidental criminal aspect does not undermine the basic principle of examining the management of the means by which justice is administered.

The same observation applies to any other areas of investigation where the possibility of uncovering criminal conduct is incidental to the predominant purpose of investigating the manner in which justice is administered by the Niagara Regional Police Force.

I earlier referred to a caveat concerning reference N°. 12, relating to improprieties or misconduct on the part of Force members arising out of the other terms of reference. I am, of course, prohibited by both the Order in Council and the *Public Inquiries Act* from expressing any conclusion of law regarding criminal responsibility.

Although *O'Hara* was approved by the court in *Starr* and *O'Hara* allows Provincial Inquiries to investigate matters within Provincial jurisdiction despite the fact that matters disclosed might later form the basis of a criminal charge, the great concern shown in *Starr* over the coercive nature of an Inquiry's methods of obtaining evidence persuades me that great care should be taken to avoid whenever possible the naming of names in my report.

Commission counsel, in his submissions, stated that he has no intention, under terms of reference N°. 12, of embarking upon a series of minitrials to ascertain whether any members of the Force or other police agencies have committed improprieties or misconduct. So far as I am aware, no such course of action was ever contemplated and would be contrary to the spirit of the *Starr* ruling.

In the course of carrying out the mandate of the Order in Council, it may at times be impossible to avoid incidental identification of some person involved in undesirable practices in the administration of the Force, but no persons will be unnecessarily identified and no conclusions of law regarding civil or criminal responsibility will be made.

Accordingly, it is my intention that this Inquiry should proceed in accordance with the principles I have set out above.

Ruling of September 3, 1991: Ability of the Inquiry to make findings of misconduct - the Notice requirements of s.5(2) of the *Public Inquiries Act* - Sergeant VanderMeer's motion

This is a motion by Cornelis VanderMeer for an order that no allegations of misconduct against him will be received in final argument and no findings of misconduct will be made against him in the Commission's report, or, in the alternative, that I state a case to the Divisional Court.

Mr. Rowell, counsel for Sergeant VanderMeer, raised a number of issues involving evidence received over the two full years of hearings, and since most of them were also included in parallel motions by the Board of Police Commissioners and others, my ruling on those motions and the present motion are issued at the same time and should be read together.

Sergeant VanderMeer's conduct was the subject of considerable criticism by several parties during some phases of the Inquiry. The relevance of this to the terms of reference was the submission that he was the source of many of the rumours and took part in events that caused a loss of public confidence in the Niagara Regional Police Force, and that the Commission should make recommendations to prevent this happening in the future. The accuracy of these submissions must therefore form an important part of my findings.

Mr. Rowell, Sergeant VanderMeer's counsel, at the beginning of his argument, suggested that, although he was taking no position as to whether the motion should be heard *in camera*, he would be referring to allegations of misconduct on the part of certain persons, and to be consistent with my earlier ruling that such matters should be *in camera* because some of the allegations might be of a scandalous nature which could irreparably damage reputations and harm the image of the Force before I had a chance to make a finding as to their validity, I should consider whether his motion should be heard *in camera*. I accordingly ruled that the motion should proceed *in camera*, but undertook to fully disclose in my subsequent public ruling on the motion all that had gone on *in camera* having due regard for matters that should remain private. As it turned out, in my opinion, nothing was disclosed in the *in camera* hearing that was not already part of the public record.

Section 5 (2) of the *Public Inquiries Act* provides: "No finding of misconduct on the part of any person shall be made against him in any report of a commission after an inquiry unless the person had reasonable notice of the substance of the misconduct alleged against him and was allowed full opportunity during the inquiry to be heard in person or by counsel." The subsection contains three important words, for which it provides no definition: "reasonable," "substance" and "misconduct," and I have been unable to find any judicial interpretation of the subsection. The subsection is fraught with difficulties, and I shall be recommending a rewriting of it in my report. Perhaps the most difficult point the applicants must get around is that, under the plain wording of the subsection, the applications are premature. It is interesting to note the wording of the subsection as it relates to timing: "No finding of misconduct ... shall be made ... in any report ... unless reasonable notice has been given ..." Thus, it is not until the report has been prepared that one can judge (a) whether a particular finding is one of misconduct, or is merely legitimate criticism of an individual's course of action; (b) if it was in fact a finding of misconduct, whether or not there had been given reasonable notice of the substance of the misconduct.

Mr. Rowell has based his case on a strict interpretation of s.5 (2). On that basis alone, his application is premature and must be dismissed.

I am advised by Commission counsel that the meaning and import of Section 5 (2) was discussed at an October 11, 1990, meeting of counsel (including counsel for Sergeant VanderMeer) and the views of all counsel were requested. The agreement arrived at by all counsel except that of Sergeant VanderMeer was that, since it would be premature to infer misconduct on the part of any person until all the evidence had been heard, the only practical way of providing notices of possible "misconduct" was to include them in the submissions of counsel delivered at the conclusion of evidence, subject to the right of reply by further submissions and/or evidence. Counsel for Sergeant VanderMeer took no part in the discussion, and advised that Sergeant VanderMeer "was not involving himself" therein. On Oct. 15, 1990, Commission counsel wrote to all counsel advising that any counsel that had advised that they required instructions from their client as to the result of the meeting should "... get back to us no later than Oct. 19, 1990, pending resumption of the hearings on Oct 23." On Oct. 24, 1990, Commission counsel wrote to Sergeant VanderMeer's counsel pointing out that he had not heard from them. No reply was received from them, and no indication was received from any counsel that they wished to take any different position. On October 26, a follow-up letter was sent to all counsel, requesting further advice on outstanding matters by October 29, failing which Commission counsel would exercise their own judgement as to how those matters would be dealt with. No dissenting letters or messages were received. On November 20, 1990, all evidence requested by any party having been heard, there was considerable discussion about the next step to be taken, namely fixing a date for submissions on the two years of evidence just completed. No one asked that any further evidence be called, and no one suggested that they required any notice of misconduct other than that of which they were already aware from the evidence itself, and that which might be contained in the submissions as discussed at the Oct. 11 meeting and agreed to by all counsel except those of Sergeant VanderMeer, who took no stand one way or the other. Accordingly, the inquiry was adjourned for the preparation of counsels' submissions on a date to be fixed. On Dec. 9, 1990, Commission counsel wrote to all counsel canvassing opinions to present to me as to the earliest date that submissions could be heard. On Dec. 31, 1990, counsel for Sergeant VanderMeer wrote to Commission counsel advising that they were proceeding on the assumption that, since no notice of misconduct under s. 5 (2) of the *Public Inquiries Act* had been provided to Sergeant VanderMeer, no finding of misconduct could be made against Sergeant VanderMeer in the Commissioner's report. No reference was made to the October 11 discussions, nor to the understanding that those in disagreement with the understanding arrived at would write to Commission counsel setting out their objections. Following an exchange of correspondence between Commission counsel and VanderMeer's counsel, on Jan. 17, 1991, Commission counsel wrote to all counsel enclosing the correspondence and inquiring whether they had changed their position as to the agreement of Oct. 11, 1990. No other counsel indicated that they had changed their mind. More correspondence ensued, with Commission counsel requesting from VanderMeer's counsel information as to what form of notice they wanted and the law on which they relied. No answers to these questions were received, and on Feb. 18, 1991, counsel for VanderMeer wrote to Commission counsel, with a copy to me, requesting me to state a case to the Divisional Court as to whether a person has received reasonable notice within the meaning of s. 5(2) of the *Act* when allegations of misconduct are made by the parties, including Commission counsel, in final submissions. Further correspondence failed to achieve a meeting of minds. I then advised Commission counsel that since this Inquiry has already been in existence for three years, the delays created by an application to the Divisional Court and possible appeals therefrom would thwart one of the objectives of this Inquiry which was to restore the confidence of the public in their Police Force as soon as possible. Accordingly, although it was felt that formal notices of possible "misconduct" could not provide the background information that counsels' submissions would provide, it was decided that all counsel would be requested to file with the Commission by May 15, 1991, notices in writing setting out the "substance" of any "misconduct" they may be alleging against any other party, and at that time any further requirements resulting therefrom, such as further evidence, would be considered.

On May 15, 1991, briefs containing notices of alleged misconduct on the part of various parties were filed by Lee Rattray personally, and by counsel for the Commission, Niagara Police Services Board, Sergeant VanderMeer, the Police Association, Chief Shoveller, James Gayder, Staff Sergeant Miljus and Sergeant Typer, the Niagara Police Force, Sergeant Ryan, and Edward Lake. The briefs were filed *in camera* because, as Commission counsel explained in his opening paragraphs, so far as his "notices" were concerned, the allegations do not necessarily represent conclusions which he will be supporting in his submissions, but rather a range of possible conclusions which could possibly be made on the evidence. He stated that they were "the outer limit" and bore no relationship to his intended submissions. Presumably because no one seems to know what is meant by the word "misconduct" in s. 5(2), Commission counsel phrased his notices as questions, viz: "Is it misconduct if it is found that ...?" He further pointed out that it was not intended to imply that the matters were necessarily "misconduct" within the statute, but were listed only so that parties who considered themselves criticized could, if they felt it was necessary, call evidence and make submissions in respect thereto. Since there was a concern that some of the allegations included in some of the submissions might have little evidentiary foundation and might be harmful to the reputations of the subject parties before they could be ruled upon by me, it was agreed that the briefs would be held *in camera* pending a further ruling by me. In answer to a question by Sergeant VanderMeer's counsel as to whether all these notices were adopted by me as Commissioner's notices, I pointed out that they were not my notices, that I felt it could be misinterpreted as "prejudging" if the Commissioner were to notify parties of a potential finding of misconduct before reviewing all the evidence from the two years of hearings, and that other than making allegations, I will be required to rule on the allegations of "misconduct" raised by the evidence or by counsel in their "notices" or submissions. I pointed out, however, that parties who were the object of such notices should be prepared, if they felt it necessary, to address them either by calling further evidence or by their submissions. I stated that, following final submissions, I might rule that some of the allegations fall outside my terms of reference, but it was too early for that now. The hearing was then adjourned to allow the parties to consider the notices, and to allow the fixing of a date to consider the calling of any further evidence parties might wish before setting a date for final submissions.

The hearings reconvened on June 12 to hear from parties who wished to call further evidence as a result of the May 15th notices. Mr. Rowell could not be present. After some discussion it appeared that none present wished to call further evidence and the Inquiry was adjourned to the next day, at which time Mr. Rowell as counsel for Sergeant VanderMeer appeared, but advised that he could not submit a list of witnesses before the end of July, and that his motion for a stated case was still alive. June 24 was then fixed peremptorily, but on his consent, for the delivery of his witness list and any motions he or others might wish to make.

On June 24, Mr. Rowell filed the present motion, asking me to rule that I could make no finding of misconduct against Sergeant VanderMeer because the provisions of s. 5(2) of the *Act* could not be met. As already noted, s. 5(2) deals with findings made in the commission's report, so that it is not possible to complain that the section has not been complied with until the report is published. Accordingly, the present motion, so far as it is based on the ground that no effective notice has been given, is premature and should be dismissed. Furthermore, unless Sergeant VanderMeer established that he had no reasonable notice, at any time, of the substance of any conduct that might be considered misconduct, his broadly drafted motion that no findings of misconduct of any kind may be made against him cannot succeed. However, the argument was also advanced that it has been, and is presently, and will in future be impossible to respond to allegations of misconduct received during the course of the hearings and in the notices of May 15 or to be received in the final submissions in the near future. I consider that the complete answer to this is that the parties have repeatedly been invited throughout the inquiry, and in the May 15 notice procedure, to call evidence in answer to any such allegations. I find that the applicant has not established that he could not in the past and cannot now answer the notices. For the above reasons, I dismiss the motion, but since the ruling is so important to the credibility of the Inquiry, I shall consider the other arguments relied upon by the applicant.

Mr. Rowell acknowledged that he had received notice under the section, but that it was ineffective as being "too little, too late." Mr. Rowell's argument, as I understand it, is that his client had no notice during the course of the evidence of any allegations of misconduct on his part, and that specific notices under s. 5(2) should have been served sometime during the course of the hearing of evidence. However, he bluntly stated: "I don't propose to do the work of Commission counsel or yourself by coming up with the precise formula in the context of these proceedings as to when notice might or ought to have been given." He nevertheless submits that notice should have been delivered at the conclusion of the investigation prior to the hearing of evidence, or, in any event prior to Sergeant VanderMeer being called as a witness, so that he would be aware that, in testifying, he might be providing evidence that could be used against him later. This would seem to suggest that, in such case, a witness would be entitled to refuse to testify, or could insist that his evidence could not be used against him. It would seem that there is a tendency on the part of some counsel who, admittedly, restrict their practices to criminal work to treat a procedure under the *Public Inquiries Act* as akin to a criminal trial, and as if it were governed by the provisions of the *Criminal Code*. Some appear to confuse a s. 5(2) notice with an indictment. This, of course, is quite contrary to the principles laid down in the *Starr* judgement, and in the *O'Hara* judgement quoted with approval therein, which I have already indicated will, of course, be one of the guides in the preparation of my report. The principles referred to are set out in my *Starr* ruling delivered on April 30, 1990, vol. 170, pp. 5-48 and which I incorporate by reference in my present ruling. This inquiry is only incidentally about a "misconduct." Its main concern is about a perceived lack of public confidence in the Niagara Regional Police Force and the need to provide a comprehensive report on many aspects of the operation and administration of the Force, with recommendations for improvement. Unfortunately, these motions are distorting the Inquiry's mandate and purposes. The October 11 procedure, proposed and agreed to by all of the parties but the applicant, whereby the "notices" would be contained in the "final" submissions, would have avoided this by including only allegations which the parties were able to substantiate by reference to the evidence. Because there was not unanimous agreement, the parties have been forced to isolate and overemphasize matters that might be considered "misconduct." Perhaps I should reiterate what I said at the opening of this Inquiry. At that time, I stated: "As I interpret the terms of reference the purpose of the commission is not to assign blame for misjudgments or even negligence that has occurred in the operation and administration of the Force over the full 17 years of its existence, although that may well be an incidental part of the Commission's findings. Rather, one of the main purposes is to publicly air the events that have given rise to many rumours of mis-management or even corruption or criminal conduct and from lessons learned to come up with a report containing recommendations that would help the administration to avoid such problems in the future. It goes without saying that if the hearings disclose corruption or criminal conduct, such findings will be included in the report setting out my conclusions of fact in that regard without expressing any conclusions of law regarding criminal or civil responsibility." That remains my interpretation and intention.

As to Mr. Rowell's proposal that notices should have been given at the conclusion of the investigation prior to the hearing of evidence, it should be pointed out that, because of the extremely wide terms of reference and new matters that were constantly being raised throughout the hearings, the Inquiry investigators continued their investigations right up to the completion of the evidentiary hearings last fall. Any formal notices prior to that time, even if such were required, would have been premature.

I shall now consider whether Sergeant VanderMeer had, either personally, or through his counsel, reasonable notice of the substance of the allegations of "misconduct" alleged against him either in the course of the hearings or in the notices filed on May 15, 1991.

In the first place, I am satisfied that, having received those notices and having been invited to call evidence thereon, the requirements of s.5(2) have been met. As mentioned, these notices were provided in an excess of caution in an effort to satisfy Mr. Rowell, and avoid the crippling delay which might be created by some appeal process. Commission counsel made it clear that they were prepared to sit down with any counsel to review the evidence and assist them in their consideration as to whether they should call further evidence on their own behalf. However, I am also satisfied that Sergeant VanderMeer had actual notice of the substance of these allegations early in the course of the Inquiry, and that his counsel frequently acknowledged this, as indicated by remarks I shall be quoting later. The reality is that any party who attended the hearings, either in person or through counsel, would have reasonable notice of the allegations of "misconduct" that might be made against him or her. From their reports, it is apparent that the media were well aware of the various allegations, and Sergeant VanderMeer had more incentive to be aware.

At the outset of this Inquiry, Sergeant VanderMeer was granted standing, and public funding, by a ruling of mine dated July 6, 1988, on the ground that he was the source of many of the allegations against ex-Chief James Gayder which were expected to be challenged by Gayder's counsel and others, and was effectively the head of a police team (referred to as the IIT; that is, the Internal Investigation Team) which carried out an extensive internal investigation of the Force in 1987, and which in many ways led to the calling of this Inquiry. Very early in the hearings, it became obvious that Sergeant VanderMeer was the target of complaints by some police witnesses to the effect that he had taken a biased and overly aggressive approach to the investigation, particularly in his interrogation of witnesses, although it was not possible to assess the seriousness of the complaints or the weight of the supporting evidence until all the evidence was heard.

Both Sergeant VanderMeer and his counsel have been present during the evidence concerning Sergeant VanderMeer's investigations and it is inconceivable that they would not have realized that Sergeant VanderMeer was the subject of vigorous criticism of his investigative techniques, his making allegations without proper evidentiary support, and an occasional lack of concern for the principles of "the chain of command." Indeed, his counsel have referred to this on several occasions. In applying for standing, his counsel stated (June 1988 transcript, pp. 115-116): "I would suspect that his investigation of the two matters involved in [terms of reference] two and three and his opinions and his position with respect to what he did with that information is going to be of great concern to him directly, particularly when you involve some of the later references in the terms of reference, notably Nos. 11 and 12 of those terms. I think they dovetail together, as it were ... my impression of his findings with respect to the storage and disposal of guns and the use of property, public property, for private means etc., those allegations are going to be directly concerned with his opinion, what he did about it, and what he felt the authorities did not do about it, as a result of which he did certain things. I don't want to go into it in detail but I can assure you that it will involve him." Later, on Nov. 15, 1988, his counsel stated (transcript, vol. 2, p. 144): "... my position on behalf of Sergeant VanderMeer is two-fold. One, I represent him because he is obviously on at least one of these terms of reference, he is the target. But I also indicated that certain criticisms of the way he investigated this matter, and that came out of my friend, Mr. Pickering's opening comments at this very hearing yesterday. I submit, I'm entitled to address, and one of the things that he investigated were these firearms. He was the key investigator, or one of the key investigators, in that investigation. I've no doubt that Mr. Pickering is ultimately going to attack him either through this witness, some other witness or through VanderMeer himself when he gets in the witness box." Later again, in answer to a question from me as to the parameters of his application that his client be treated like Dr. Shulman in Re: *The Public Inquiries Act and Shulman* (1967) 2 O.R. 375 he stated (transcript, vol. 6, p. 131): "But I certainly hark back, Mr. Commissioner, to my friend Mr. Pickering's comments the other day, when I asked him if I could have an undertaking that the Sergeant's conduct, insofar as the investigation of the ex-Chief was concerned, would not be made subject to comment by him or criticised by him, and he quite honestly indicated that he could not give such an undertaking." Commission counsel then summed up the situation at p. 135: "The status of being a

Shulman, as we've referred to it, is that he is advancing allegations in his personal behalf, that he is somehow outside the scope of that investigation personally, advanced allegations which he now feels called upon to defend for the sake of his personal reputation. That is what being a Shulman means in this context, and I just want to be perfectly clear, when Mr. McGee stands up and makes that kind of application that his client is putting himself in that position."

It is apparent that Sergeant VanderMeer's counsel anticipated an attack on his client's conduct from the start of the Inquiry, and put his reputation in issue almost immediately. On November 29, 1988, on the ninth hearing day, he cross-examined Staff Superintendent Moody, the nominal head of the ITT, about VanderMeer's ability and his honesty (vol. 8, p. 96), and explored his reputation with a Crown Attorney (Dec. 8, 1988, vol. 14, p. 50), and with other witnesses from time to time.

On November 21, 1989, VanderMeer's counsel clearly indicated that VanderMeer was aware of the possibility of complaints about his conduct. At p. 56 of vol. 124 of the transcript of evidence, in cross-examining Sergeant Melinko about the arrest of Ellis, the Force mechanic, she states: "… my client, it is acknowledged that he's going to be targeted here in this Inquiry. I think that's fairly obvious to everyone. If there's going to be any criticism of my client, with respect to how he handled Mr. Ellis, I want to cover these things with the people, who were present at the time."

In his Sept. 12, 1990, statement (transcript, vol. 213, p. 25) VanderMeer's counsel, referring to Commission counsel, stated: "In particular, it goes without saying that he takes the view that many of the allegations that we have heard from time to time are totally without substance. That they may have been advanced by my client, Sergeant VanderMeer, and by others, for their own personal, or political, gain, or whatever reason he might attribute to them, and that my client, and others, are to be condemned for having done that."

Sergeant VanderMeer must have been fully aware that he might be criticized for failing to respect the chain of command. In connection with his involvement with "Project Vino" without authorization of the Chief of the NRPF, his own counsel's cross-examination of Chief Shoveller, on May 22, 1990 (vol. 182, p. 160) was as follows: "Q: … do you feel that Sergeant VanderMeer should be criticized in light of all of what I've told you in reference to his participation in Project Vino? A: I feel that Sergeant VanderMeer should have made that known to his superiors, yes."

As to VanderMeer's expectation of criticism of his leaking police information to the media, on May 2, 1990, vol. 172, at p. 150, his own counsel asked him: "Q: Well, we have heard evidence, and I am going to put it to you, because there is obviously going to be some criticism forthcoming that you went to Peter Moon or spoke to Peter Moon, and he ultimately ended up writing the article about Cardillo. I won't go through the whole of the evidence, but you have heard that? A: Yes." Peter Moon is an investigative reporter for the Toronto *Globe and Mail*.

Sergeant VanderMeer must have realized during the course of the evidence that he was likely to be criticized for arranging a meeting amongst Mrs. Taylor, Peter Moon, Neil Taylor and himself without the authority of his superiors. In the presence of VanderMeer and his counsel, Chief Shoveller said on May 7, 1990 (vol. 174, p. 92), referring to that meeting: "It is totally improper for a member of the Force, without the proper authorization, becoming involved with a Board member in matters of that nature." Further on May 17, 1990 (vol. 181, p. 74) the Chief said, "I think it is totally improper for the Chairman of the Board and Sergeant VanderMeer to be meeting with Mr. Moon under those circumstances."

In January, 1989, in the early stages of this Inquiry, Inspector John Stevens, who had been in charge of Quartermasters Stores from the Force's inception in 1971 until 1981, was on the witness stand for a good part of three days. During his cross-examination by various counsel, he expressed his concern about the manner in which Sergeant VanderMeer had interviewed him on March 1, 1987, regarding ex-Chief Gayder's acquisition of certain guns, to the extent that he made private notes to himself after the interview. It was apparent that he considered that Sergeant VanderMeer had approached the investigation of the property system, under orders of the acting Chief, with a bias against Gayder which he carried into his interview methods. The extremely vigorous cross-examination of Stevens by Mr. Rowell, counsel for Sergeant VanderMeer, consumed some 70 pages of transcript (vol. 29, pp. 27 ff.) and nearly half of this was concerned with the witness's criticism of Sergeant VanderMeer's overbearing investigative technique. Over a year ago, in making his submissions to the effect that the *Starr* decision precluded me from continuing with this Inquiry, he said (transcript, vol. 168, April 23, 1990, p. 35): "In particular, Mr. Kelly, in his cross-examination of Sergeant VanderMeer, has alleged, has focused upon, has striven towards, the interpretation time and time again (ill-founded, I might say), of criminal activity on the part of Sergeant VanderMeer; not as the purpose of these proceedings, but as their effect. The criminal activity on the part of Sergeant VanderMeer with respect to, in particular, as I see it, an alleged obstruction of justice involving the Sacramento gun."

In my ruling on Mr. Rowell's application to have the *Patty Starr* decision apply to this Inquiry, I made particular reference to my concern about the IIT investigation, in the presence of both Mr. Rowell and Sergeant VanderMeer. At transcript, p. 45, vol. 170, April 30, 1990, I pointed out: "There has, however, been evidence that members of the Force perceive some of the Internal Investigation Team to be guilty of bias, intimidation and improper investigative techniques employed while interviewing various members, and I consider that a review of the methods by the Internal Investigation Team forms part of my mandate to ascertain whether there has been a loss of confidence in the Force and to make recommendations to correct any defects in policy, training or methods of selecting investigators, and that that is justified within the principles laid down in *O'Hara*."

In the written application of Faye McWatt for standing and funding on behalf of members of the IIT other than Sergeant VanderMeer, in justifying the separate representation of these members, after indicating that she had spoken to Mr. Rowell, one of Sergeant VanderMeer's counsel, she stated: "Sergeant VanderMeer has had standing in this Inquiry since July, 1988. Inter alia, standing was granted on the basis that VanderMeer alone was in a unique position akin to that of Dr. Morton Shulman. The rationale for this standing seems to have been that pursuant to Section 5(2) of the *Public Inquiries Act*, VanderMeer could be adversely affected, from a professional perspective, if the allegations which he, and he alone has made, were determined to be unfounded ... Mr. Rowell has told my clients that Sergeant VanderMeer is his priority and in the event of a conflict, any concern for other members of the IIT would be secondary. Given that all members of the IIT are potential 'targets' during the next phase of this Inquiry, their interests would not be adequately safeguarded by counsel who has as his/her primary obligation, an individual officer as opposed to the team as a whole." The letter has been on file as exhibit 296 since September 19, 1989, and the reference to Dr. Morton Shulman and "targets" must be presumed to have come from, or at least be known to Mr. Rowell, since he contributed to Ms McWatt's information in that regard, and was the one most familiar with Sergeant VanderMeer's situation.

These are only a few of the numerous examples of the obvious awareness of Sergeant VanderMeer and his counsel of the fact that he was one of the parties granted standing whose conduct was under scrutiny and who was likely to be the subject of adverse criticism in the submissions of other counsel to be delivered at the end of the Inquiry. Commission counsel has set out in his submissions on this application the exact citation in the transcripts of evidence where the evidence, and therefore the "notice," of each instance of possible misconduct is to be found. Indeed, the extremely vigorous, detailed and lengthy cross-examination by Sergeant VanderMeer's counsel of witnesses whose evidence was critical of Sergeant VanderMeer, and their cross-examination, replete with leading questions, of Sergeant VanderMeer himself in relation to such criticism, was consistent only with the knowledge that Sergeant VanderMeer was likely to be a "target" of allegations of improper conduct in the final submissions. I am satisfied that on the basis of the conduct of Sergeant VanderMeer's counsel alone, they had reasonable notice of the substance of the allegations of "misconduct," and had ample opportunity to call evidence in reply. Reid and Davis in *Administrative Law and Practice* (2d), in discussing the law of notice, observe at p. 64: "The courts will not interfere, in the absence of evidence of improper motive or bad faith, with the Tribunal's decision as to what constitutes sufficient notice."

In *Landreville v. The Queen*, [1977] 2 F.C. 726, a Commissioner was appointed by the Governor in Council under the *Inquiries Act*, a federal statute, to inquire whether, in the course of certain dealings in the shares of a company a federally-appointed judge had done anything that constituted misbehaviour in his capacity as a judge, and had thereby proved himself unfit for the execution of his judicial duties. Section 13 of the *Inquiries Act* (a federal statute) provides: "No report shall be made against any person until reasonable notice has been given to him of the charge of misconduct alleged against him and he has been allowed full opportunity to be heard in person or by counsel." Prior to the calling of the Inquiry, there had been a Securities Commission hearing and a criminal investigation of the circumstances resulting in charges which involved other persons. In his report the Commissioner found that Landreville's conduct in giving evidence before the Securities Commission and in the perjury proceedings against another party to the share transactions had constituted a gross contempt of these tribunals, and had permanently impaired his usefulness as a judge. In due course Landreville applied to the Federal court for a declaratory judgement that the Inquiry proceedings were, inter alia, in violation of s. 13 of the *Act*. The Court agreed with the plaintiff that there was nothing in the terms of reference nor in the evidence during the hearing that any allegation would be made against the plaintiff in respect of previous testimony, and that the first notice the plaintiff had was the publication of the report. At p. 758 of its judgement, the Court said: "I agree with the plaintiff's position that in the circumstances here, the Commission should have been reconvened. The substance of the proposed allegations of misconduct set out in conclusions 2 and 3 should have been made known to the plaintiff in accordance with section 13. The plaintiff should then have been given the opportunity to meet those specific charges." Thus the finding of the Court was that notice given even after final submissions would have been proper provided that the subject of the notice was given an opportunity to call further evidence. The advantage of this procedure is that, contained in the "final" submissions will be particulars of the alleged misconduct, whereas a generalized notice given before all the evidence is heard is bound to lack details and may have to be withdrawn later because of conflicting evidence, causing procedural confusion and unnecessary interim embarrassment to persons named. Even in a criminal trial (as a "worst case" example), the accused person does not call evidence until all the opposing evidence has been heard, and Mr. Rowell has not made it clear to me why in the present case it is too late to call evidence as a reply to the May 15 "notices." Here, that opportunity to call reply evidence was available to anyone, not only during the hearings, but also after the May 15 notices. If there are any new allegations of misconduct in the final submissions, it has been made clear that any affected party may call further evidence at that time as well.

Similarly, in *Re Royal Commission on Conduct of Waste Management Inc. et al* (1977), 17 O.R. (2d) 207, the Court, in discussing the respective scopes of s. 5(1) and s. 5(2) of the *Act*, said: "The purpose of ss. 2 is to be given effect at the end of the inquiry, and is to protect a person against whom the Commission contemplates an allegation of misconduct in the finding and report of the Commission, against such finding unless he had reasonable notice of the substance of the allegation and was allowed full opportunity to be heard." Mr. Rowell submits that this merely means that the subsection cannot be given effect to until the end of the Inquiry, when it must be ascertained whether notice was given in a timely fashion, and submits that it is too late if given at that stage. I do not accept that interpretation and it is not the interpretation of the subsection ascribed to it by other Commissions. I am advised that in the "Mississauga Railway Accident Inquiry" and the "Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair Stevens," both of which were federal inquiries, and in the "Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children" which was a provincial inquiry, it was agreed that the only practical way of applying s. 5(2) of the Ontario *Act*, or the similar provision of s. 13 of the Federal *Act*, was to incorporate the required notice in counsels' "final" submissions and to allow any party, who so wished, to call further evidence. It is interesting to note that none did ask to call further evidence, presumably because they had received full notice in the course of the evidence already heard. In the "Commission of Inquiry into the RCMP," notices were given at the conclusion of evidence, and some parties did call further evidence.

This approach is set out by David W. Scott, Commission counsel to the Sinclair Stevens Inquiry, in his article in Pross' "Commissions of Inquiry" (Carswell, 1990), commenting on the comparable provision s. 13 of the Federal *Inquiries Act* (which I quoted earlier in the *Landreville* Case). At pp. 144-145 of his article, Mr. Scott notes: "The difficulty with section 13 relates to its administration. How can a commission fairly and at the same time procedurally comply with this provision? If reasonable notice is given during the inquiry either by specifics in its terms of reference or by allegations during its course, then if the persons affected responded and met the allegations during the course of the inquiry, no special notice need be given under section 13 thereafter. However, if no such notice of allegations of misconduct was given before or during the course of the inquiry, then section 13 must specifically be complied with before the commissioner's report is delivered. If notice is given literally before the report is released, the opportunity to be heard would be somewhat illusory because the commission would have identified allegations of misconduct in the course of arriving at its conclusion and thus might be said to have effectually made up its mind before notice was given. In such circumstances, one might be forgiven for concluding that the opportunity to be heard was somewhat of a sham. If the commission gives notice after hearing the argument of counsel, the same sort of problem may arise. In any event, in an ideal environment the commission itself should not give notice because the obvious implication is that it may have drawn conclusions in order to draw the indictment. If a formal notice under section 13 is required, it should probably be given privately by commission counsel anticipating all possible findings of misconduct which the commission might make. Further notice can be given if the draft report suggests additional findings of misconduct. A solution currently in use is to comply with the notice requirement by way of Commission counsel's argument. If the argument is delivered in writing to all parties and they are given an opportunity to be heard under section 13 thereafter, as long as commission counsel's argument is cast broadly enough to include all possible conclusions as to misconduct, then the requisite notice has surely been given."

S. 5(2) does not require any kind of written notice, or specific notice. Had that been intended it would have said so. All that it asks for is reasonable notice of the substance of the alleged misconduct, which suggests that such notice, in the course of the evidence, would be the normally expected procedure. An early generalized notice would, of necessity, be too vague to be of much assistance to the subject of such notice, and would probably result in a demand for particulars that could not be met until the evidence had been heard. For the Commission to provide a formal notice at an earlier time, it would have to come, or appear to come, to a factual conclusion before it had heard submissions from anyone, and that is the appearance that Commission counsel was attempting to avoid by the agreement of Oct. 11, 1990, and later by making it clear that his notice of May 15, 1991, was not necessarily what he would be urging in his submissions.

Commission counsel, in his submissions on this motion, has at great length, set out, with specific page references, the evidence in the transcripts that gave Sergeant VanderMeer notice of possible allegations of improper conduct. As well, counsel for Sergeant VanderMeer either made, or was present when others made the references I quoted earlier to allegations of inappropriate conduct on the part of Sergeant VanderMeer, and must have been aware many months ago of the necessity of being prepared to make submissions in that regard, and of considering the advisability of calling witnesses to answer such allegations when invited to do so at the completion of evidence tendered by Commission counsel on November 20, 1990. However, the invitation was not accepted then, nor later.

Accordingly I find that Sergeant VanderMeer had reasonable notice of the substance of the allegations of improper conduct now made against him, whether or not that conduct falls within the meaning of "misconduct" under s. 5(2) of the *Act*.

Mr. Rowell submitted that the Inquiry had been unfair to his client in a number of ways. I am not quite clear what this has to do with s. 5(2), but gather that he complains that Sergeant VanderMeer, as a result, cannot now answer the notices of alleged misconduct.

Mr. Rowell submits that his client is prejudiced by the fact that when he gave his evidence regarding the IIT's investigation, his evidence was led by Commission counsel, which gave him the opportunity to re-examine at the end of his testimony. The only reference to this in the transcript is to be found in vol. 164, p. 68 (Feb. 27, 1990), where Ms Dunlop, counsel for Sergeant VanderMeer, stated that she had spoken to Mr. Kelly, Commission counsel, about her leading VanderMeer's evidence, but had asked for time to consider the question, that VanderMeer had been called to the stand earlier than she had expected, and Mr. Kelly had proceeded to examine him (I should emphasize that no mention of this, let alone any objection, was made to me at the time of that earlier examination). She went on to state that under the circumstances she was now applying to be allowed to examine him after all other counsel had examined. I agreed to this. Sergeant VanderMeer continued to give evidence until March 5, at which time Ms Dunlop requested that she should not be called upon to cross-examine until after the projected spring break in order to give her time to prepare her cross-examination. This was also agreed to, and we recessed for the break. When evidence resumed, Ms Dunlop commenced her cross-examination without further comment. I accordingly find that there was no objection made to the procedure, there was no prejudice, and in fact Ms Dunlop had the advantage of cross-examining her client after all other counsel had disclosed their criticisms of him.

Mr. Rowell also complains that Mr. Kelly, as Commission counsel, had a "hidden agenda," which was to find his client guilty of misconduct sufficiently serious to cause him to be dismissed from the Force. He submits that some documents and the names of some potential witnesses were not disclosed, which prevented his client from making full answer and defence. The only witness he referred to was an ex-RCMP officer who had left that Force under a cloud, and about whom Sergeant VanderMeer had heard over the Labour Day weekend in 1990. The person had been interviewed by the Inquiry investigators, all very experienced senior Metro Toronto police officers, who had discounted his evidence as being totally unreliable. However, because of Mr. Rowell's vehement protest, the person and others were then interviewed, transcripts of their statements were prepared and circulated while the Inquiry was recessed, and the person in due course gave his evidence. Other counsel involved submitted that his evidence did not, because of its nature, advance the interests of the Inquiry, or of Sergeant VanderMeer, in any way, but Mr. Rowell's submission is that, even though the witness may not have been credible, his existence and the transcript of the original interview should have been disclosed to him, as VanderMeer's counsel, so that he could decide for himself whether that evidence should be called. I consider that the role of Commission counsel is to decide what evidence should be called, and should not waste the time of the commission in calling evidence that is obviously not credible. Mr. Rowell also complains that five or six documents were not disclosed to him, until they came to light in later evidence, and that he is therefore in doubt as to how many other witnesses and documents may not have been disclosed. Mr. Kelly, in his reply, satisfactorily explained the reason why the documents in question were not distributed, and I am satisfied that there was no prejudice caused to anyone. Over 12,000 documents, ranging from one to over 200 pages in each, were turned over to the Inquiry investigators by the NRPF to be examined for relevancy; the investigators generated through interviews and obtained by inquiry a great many further documents, and during the course of the inquiry hearings thousands of documents and some 240 briefs, many of which contained two or three hundred pages, were copied and distributed to counsel. For this purpose, it was necessary to make, at very considerable trouble and expense, 14 copies of every document and brief. In my 26 years on the bench, I have never seen anything to approach the complete disclosure that Commission counsel has arranged in this Inquiry. If, inadvertently, a document was overlooked, it was disclosed as soon as the oversight was discovered. I have examined the documents that might be helpful to Sergeant VanderMeer. Both Commission counsel have gone to extremes to ensure that all counsel were as fully apprised as possible as to disclosure of anticipated evidence and documents, and I dismiss out of hand the suggestion of bias on their part.

Mr. Rowell complains that some 129 days were spent on examining the IIT investigation, in an attempt to show improper conduct on the part of his client. I am not quite sure what this has to do with the timeliness of the notices, but Commission counsel has pointed out that about 35 days, not 129, were spent in that regard. During this phase, Sergeant VanderMeer was represented by another counsel. While the actual subject matter of any session is a matter of individual interpretation, my examination of the transcripts convinces me that the time spent on the IIT phase was much closer to Commission counsel's estimate. Unfortunately, due to many problems such as witness availability, it was not always possible to confine the hearings to specific subjects. For example eight hearing days during this period were consumed in an application by Board counsel to disqualify the counsel for the Police Association on the ground of conflict of interest. In any event, a thorough examination of the IIT investigation was necessary in order for me to be able to assess the effect the investigation had on the Force, and the effect the proliferation of rumours and allegations that circulated during the investigation might have had on the alleged public loss of confidence in the Force. I am satisfied that there was nothing improper about the time spent on the IIT.

Mr. Rowell further submits that I have no jurisdiction to consider any matter arising after March 25, 1988, being the date of the Order in Council creating this Commission. I ruled against this submission on February 20, 1990, and no appeal was taken from that decision. Counsel have since proceeded to lead evidence and refer to matters that arose since March, 1988. Counsel are accordingly estopped from making such a submission now. However, I should once again point out the absurdity of the proposition. The very broad terms of reference obviously require me to consider the operation and administration of the Force as it is now, as well as how it was in the past. For example, term 5 requires me to report and make recommendations on "… the state of existing relations between members of the Force and the Niagara Regional Board of Commissioners of Police." There would obviously be little point in making recommendations about the relations as they existed in early 1988 if the evidence indicates that the relationship has changed substantially at the present time. Further, my report would be of little use if I could not take into account changes that have been made in the operation of the Force as a result of information that has come to light over the last three years, and instead was forced to make recommendations to improve the outdated policy that existed in 1987. Should I recommend changes in 1987 problem areas that have already been corrected? Should I ignore serious problems that have developed since 1987? Consultants' workshops were held over a period of several days in the fall of 1989, the results of which were greeted with universal approval by all parties. To carry Mr. Rowell's proposition to its logical conclusion, I would have to ignore the valuable information and suggestions that came out of that rather costly but worthwhile exercise. Term of reference N°. 9 requires me to report and make recommendations on the morale of members of the Force. I am not persuaded that what was wanted was recommendations on the state of morale in 1987. I accordingly reiterate my ruling of February 20, 1990, denying this proposition.

The mandate of this Commission is to inquire into, report upon and make recommendations with respect to the concerns of the Lieutenant Governor in Council about "… a loss of public confidence in the ability of the Force to discharge its law enforcement responsibilities" and "… the need for the public and members of the Force to have confidence in the administration of the Force." In carrying out that mandate, it will be necessary for me to canvass the facts that constitute the history of the operation and administration of the Force, and in so doing, to consider the matters set out in the notices of May 15, 1991, not as matters of misconduct, but as matters that may have contributed to the possible loss of confidence in the Force on the part not only of the public, but of members of the Force themselves.

As I pointed out in my ruling on *Starr* (reference above) at p. 47: "Commission counsel, in his submissions, stated that he has no intention, under terms of reference N°. 12, of embarking upon a series of mini-trials to ascertain whether any members of the Force or other police agencies have committed improprieties or misconduct. So far as I am aware, no such course of action was ever contemplated and would be contrary to the spirit of the *Starr* ruling. In the course of carrying out the mandate of the Order in Council, it may at times be impossible to avoid incidental identification of some person involved in undesirable practices in the administration of the Force, but no person will be unnecessarily identified and no conclusions of law regarding civil or criminal responsibility will be made."

In spite of my repeated assurances that I have no intention of unnecessarily criticizing individuals, that any party is free to call any relevant evidence he or she wishes in response to criticism by other parties, and that I fully recognize the limitations on my mandate in that regard, this Inquiry has been side-tracked since the last evidentiary hearings on November 20, 1990, by a series of applications, motions and negotiations amongst counsel. Had final submissions, and any evidence arising as a result of criticisms of personal conduct, been proceeded with as agreed to by all counsel but one, it is probable that the Inquiry report would, by now, be well on its way to completion. I am anxious to get on with my job, and the parties will have to rely on my discretion.

For the above reasons I see no justification for stating a case as requested, and the application is dismissed.

Ruling of September 3, 1991: Ability of the Inquiry to make findings of misconduct - the Notice requirements of S.5(2) of the *Public Inquiries Act* - the Board's motion

There are five motions before me, all dated July 2, 1991, four of which claim the same relief in virtually identical language, except for the name of the applicant. As well, all four seek the same relief (apart from a request for a stated case) as was sought in Sergeant VanderMeer's motion, my ruling on which is issued at the same time as the present ruling. Because of the similarity of the motions, I have not repeated all my conclusions on similar submissions in each ruling, and accordingly this ruling and the VanderMeer ruling should be read together. The fifth motion, which was mainly for particulars, was in part abandoned. In the four motions, Mr. Shoniker on behalf of the Niagara Regional Police Services Board, Ms McWatt on behalf of six members of the IIT, Sergeant Ron Peressotti on his own behalf, and Deputy Chief Kelly on his own behalf each seek an order that no allegations of misconduct be received by me and no findings of misconduct be made by me against the applicants on the grounds that requirements of Section 5 (2) of the *Public Inquiries Act* cannot be met in the circumstances of these proceedings and/or the notices of May 15, 1991, exceed the Commission's jurisdiction.

The short answer to these motions should be that they are out of time. On April 19, 1991, a letter was sent to all counsel advising them that the Commission would convene on May 22, 1991, to hear submissions or motions concerning anything further any party considered should be done in completing the Inquiry prior to final submissions, and directing that notices of motion comply in substance with Rule 37.06 and should be filed by noon of May 21, 1991. This would allow counsel a week following the filing of the May 15 notices to request further evidence or some other relief. On May 17, all counsel were advised by letter that the time for such motions had been extended to June 12, with notices of motion to be filed by noon of June 11, 1991. On June 12, the return date for motions was further extended to June 24, with a direction that the notices of motion be filed during the week of June 17.

None of the present motions complied with that direction. They accordingly are untimely and should be dismissed on that ground. However, I agreed to hear the motions, but the timing and general circumstances of the manner in which the motions were brought forward are relevant matters that I shall consider.

In any event, these motions are premature because, on the plain wording of Section 5 (2), it is impossible to know whether a finding in the report is of a kind that requires notice until the report is prepared. I refer to my reasoning on this point on p. 2 of the VanderMeer ruling.

The fifth motion referred to earlier was filed by Mr. Fedorsen on behalf of Chief Shoveller, asking for an order for particulars of the May 15 allegations against him, and a finding that the allegations were beyond the Commission's jurisdiction insofar as they pertained to matters arising after the date of the Inquiry Order in Council. Mr. Pickering, on behalf of ex-Chief Gayder, requested that Chief Shoveller be called as a witness to support his motion, and upon my ruling that the Chief should be called, Mr. Fedorsen withdrew his motion insofar as particulars are concerned, but did not withdraw the portion of his motion referring to jurisdiction.

Ms McWatt was engaged in a trial on July 8, the return date of her motion, and when contacted by telephone by Commission counsel, stated that she had filed her motion when she heard that others were doing so, that she considered that the question was purely one of law regarding the meaning of Section 5 (2), and would rely on Mr. Shoniker's argument. Deputy Chief Kelly and Sergeant Peressotti did not appear until contacted by Commission counsel, but appeared in the afternoon of July 8 to request standing and funding for counsel. The next day, they withdrew their request for counsel, and made no submissions on their motions, but stated that their motions remained in force. As a result, the only submissions supporting the various motions were made by Mr. Shoniker.

Mr. Shoniker submitted that the notices of May 15 in relation to his clients should be struck out on four grounds. The first was that some of the allegations arose out of matters occurring after the date of the Order in Council, and were beyond the jurisdiction of the Commission. On February 20, 1990, Mr. Shoniker advanced the same argument, and I ruled against him. The ruling was not appealed, and cannot be reargued at this time. The point was also raised by Mr. Rowell in his almost identical motion of June 24, 1991. I repeat the reasons set out in my ruling on Mr. Rowell's motion, viz.:

> "However, I should once again point out the absurdity of the proposition. The very broad terms of reference obviously require me to consider the operation and administration of the Force as it is now, as well as how it was in the past. For example, term 5 requires me to report and make recommen-

> dations on 'The State of Existing Relations Between Members of the Force and the Niagara Regional Board of Commissioners of Police.' There would obviously be little point in my making recommendations about the relations as they existed in early 1988 if the evidence indicates that the relationship has changed completely at the present time. Further, my report would be of little use if I could not take into account changes that have been made in the operation of the Force as a result of information that has come to light over the last three years, and instead was forced to make recommendations to improve the policy that existed in 1987. Consultants' workshops were held over a period of several days in the fall of 1989, the results of which were greeted with universal approval by all parties. To carry Mr. Rowell's proposition to its logical conclusion, I would have to ignore the valuable information and suggestions that came out of that rather costly but worthwhile exercise. Term of reference N°. 9 requires me to report and make recommendations on the morale of members of the Force. I am not persuaded that what was wanted was recommendations on the state of morale in 1987. I accordingly reiterate my ruling of February 20, 1990, denying this proposition."

Mr. Shoniker submits that to consider matters arising after the date of the Order in Council would result in "a self-perpetuating, permanent public inquiry." The simple answer is that I have a discretion as to what I consider relevant to this Inquiry, and I have no intention of allowing the Inquiry to continue any longer than is absolutely necessary. On November 20, 1990, Commission counsel completed the calling of evidence he considered relevant to the mandate of this Inquiry, and no other counsel accepted my invitation to call further evidence. The Inquiry was, to all intents and purposes, completed at that time, subject to any party electing to call further evidence if they considered it necessary because of allegations raised in the final submissions.

Before adjourning for final submissions, Mr. Shoniker made a statement that the Board was satisfied, and that the public could be assured, that all relevant evidence had been called and that "... no stone had been left unturned." Had this Inquiry not subsequently been sidetracked by the legalities raised by some of the parties, this Inquiry would be in the report stage by now.

Mr. Shoniker's second point was that the notice procedure, as adopted by the Commission, was a denial of natural justice and fairness, and contrary to Section 7 and Section 11 (d) of the *Charter of Rights and Freedoms*, which guarantee fundamental justice, the presumption of innocence, and the right to be tried by an independent and impartial tribunal. So far as I understand this reference, it relates to the May 15 notices being too late. This is very much the same argument advanced by Mr. Rowell in his almost identical motion on behalf of Sergeant VanderMeer, and I refer to my ruling in that regard. As in that case, the Board and its members must have been aware, throughout the hearings, that they might be criticized, and the Chairman complained in her evidence of the fact that they were being made "targets." It would be impossible for members of the Board to undergo the cross-examination to which they were subjected, particularly by counsel for ex-Chief Gayder and the Police Association, as well as others, without being very much aware of the allegations of instances of improper conduct, both general and specific, that might be made against them. Indeed, Board counsel has complained bitterly on many occasions, and as recently as the last few weeks, about those allegations made by other counsel. As well, Commission counsel has, in his submissions, set out the exact spot in the transcripts where evidence of the allegations provided notice to the Board and its counsel. These references clearly indicate that the Board and its counsel had to be aware of what was being alleged against the Board by Commission counsel and other parties, long before the evidence concluded.

Counsel for Mr. Gayder and for the Police Association have submitted that in bringing its present motion, the Board is taking part in an orchestration, in company with the others making identical motions, to frustrate the objects of this Inquiry. They suggest that it is relevant whether, in bringing these late motions, the applicants genuinely believed in their applications and had a factual foundation for their claim that they were unaware of the substance of the allegations against them. They requested that the present Chairman of the Police Services Board, and one of its members, be called as witnesses in that regard. When the Chairman and the member appeared before the Inquiry, Board counsel stated that he would allow them to answer "two simple questions, and that is 'Are you surprised (by the May 15, 1991 notices) and if you were, explain fully why?'" He stated that they would refuse to be cross-examined thereon, and if that was not satisfactory to me, he requested that I state a case in that regard for the Divisional Court. To do so, it would of course have been necessary to call the Board witnesses to the stand, and if they refused to be sworn or to answer questions, to state a case to the Divisional Court requesting that they be held in contempt. To avoid the obvious embarrassment, legal complications and delay that would ensue in that event, the counsel who had requested their attendance withdrew their request.

However, I must take into account this refusal in connection with the submissions. I have already mentioned that it has been submitted that the manner in which these motions were brought is relevant to my consideration of whether the applicants genuinely believed that they had not been provided with adequate notice. Upon the timeliness of this motion being challenged by opposing counsel, Mr. Shoniker stated that he had attended on June 24, 25, and 27, 1991, to bring this motion, but was not reached because of the length of Mr. Rowell's motion. That is not accurate. At the end of Mr. Rowell's motion on June 27, Commission counsel asked Mr. Shoniker whether he had a motion to bring. Mr. Shoniker stated that he had, but was awaiting instructions. Twelve pages of transcript later (June 27/91 transcript, vol. 236, pp. 184-195) following my intervention and that of other counsel, I had still not been able to learn what the substance of the motion was to be. In view of the fact that the Board had been in receipt of the May 15 notices for six weeks, had given no indication of moving against them until after Mr. Rowell's submissions on his motion had been made, and in view of Mr. Shoniker's statement – "In filing a motion as I did, I've followed, wisely or unwisely, the format that I had seen in the motion filed by Mr. Rowell." I am forced to question the sincerity of the submission that the Board was taken by surprise by the May 15 notices which raised the question of whether some of the Board's actions might constitute misconduct. On all of the evidence, I find that the Board had reasonable notice, during the course of the hearings, of the substance of the allegations against them.

In my ruling on Mr. Rowell's motion, I have already outlined the circumstances of an agreement reached at an October 11, 1990, meeting of counsel, including Mr. Shoniker, Mr. Fedorsen, and Ms McWatt, called by Commission counsel to consider any "outstanding matters." All, except Sergeant VanderMeer's counsel, agreed that the evidence and final submissions by counsel would satisfy the notice provisions of Section 5 (2). No one questioned this agreement following Commission counsel's letter of October 15, 1990, requesting that "All counsel who indicated they had to get back to us on matters raised at the meeting of counsel should do so not later than Friday, October 19/90." On December 9, 1990, Commission counsel polled all counsel requesting suggestions as to the earliest reasonable date for final submissions. Amongst others, Mr. Shoniker replied, proposing April 15, 1991, without any suggestion that the agreement of October 11, 1990, was not in effect. On January 17, 1991, Commission counsel wrote all counsel, enclosing Mr. Rowell's correspondence disputing the proposal to accept "final" submissions as adequate Section 5 (2) notices, and reiterating Commission counsel's argument in favour of that procedure, and asking that if any counsel no longer agreed with his position, that they should advise him immediately. Neither Mr. Shoniker nor any other counsel indicated any change in position. Accordingly, quite apart from the fact that notice within the meaning of Section 5 (2) was given to the Board by way of evidence and submissions during the course of the evidence, and by specific notice on May 15, 1991, I find that the October 11, 1990, agreement that notice under Section 5 (2) should be given by way of the final submissions is binding upon all counsel except Mr. Rowell, and that the Board cannot unilaterally void that agreement.

Following correspondence and telephone calls from Commission counsel insisting on the production of Board minutes and tapes in accordance with my ruling of February 20, 1990, Mr. Shoniker on March 11, 1991, wrote Commission counsel a four-page letter questioning the relevancy of the requested tapes, and also referring to a June 20, 1990, discussion outside the Hearing Room, when Mr. Shoniker and Mr. Fedorsen expressed to Mr. Kelly their "concern that the Commission was targeting Board members and Chief Shoveller," and that Mr. Kelly had expressed some concern with respect to their activities, but nothing that approached "wrongdoing." Mr. Kelly replied on March 25, 1991, respecting the relevancy of the tapes, and in relation to the June 20, 1990, discussion, stated that at that time he advised Mr. Shoniker and Mr. Fedorsen that it was not then possible to provide any definitive view of the position that Commission counsel would take until he had been able to fully review the evidence and that when he had done so, he would notify them of his submissions, but that those submissions were not yet completed. Mr. Shoniker replied on March 28, 1991, about the requested tapes and also referred to an understanding that "conduct of counsel; that is, Fedorsen, Shoniker, is not an issue which you are required to explore" and stating that on June 20, 1990, Mr. Kelly said to Mr. Fedorsen and Mr. Shoniker "I sense your lady (meaning Mrs. Taylor) is in more trouble than your guy (meaning Chief Shoveller), but it doesn't approach wrongdoing." It is apparent that the counsel involved do not agree on the details of the June 20 discussion. I have no intention of involving myself in a question of the accuracy of the recollections of counsel of long past events. Mr. Shoniker suggests that his interpretation of the discussion may have affected the manner in which he conducted his case after June 20, 1990. However, after June 20, 1990, no member of the Board gave evidence and no evidence was received concerning any allegations of misconduct of the Board or its members, so that, even if Mr. Shoniker's recollection of the discussions is correct, it could not have affected the manner in which he subsequently conducted himself in the hearings. Had he placed much importance on the discussion, surely he would not have waited nine months to attempt to confirm his understanding of it, particularly in view of the casual and imprecise nature of discussions that normally develop between counsel, after being associated for two years or more, on an informal proceeding such as this. Following receipt of the "notices of misconduct" on May 15, 1991, Mr. Shoniker wrote Commission counsel complaining that some of Mr. Kelly's notices appeared to criticise Board counsel, and submitted that this was beyond the Inquiry's jurisdiction. No mention was made of the June 20, 1990 discussion. Surely, if Board counsel was genuinely placing reliance on that discussion, this would have been the time to vigorously protest any notices raising a question of misconduct on the part of the Board. I am satisfied that whatever was the real import of the June 20, 1990 discussion, it did not affect Board counsel's conduct of his case, nor could it bind me as Commissioner, or counsel for ex-Chief Gayder, counsel for the Police Association, or any other counsel whose May 15 notices contained allegations against the Board, and thus the June 20, 1990 discussion should not have affected Mr. Shoniker's conduct of his case. In any event, Mr. Shoniker's recollection refers to the word "wrongdoing." "Wrongdoing" seems to connote something much more evil or reprehensible than "misconduct." If that word was actually used, it seems probable that it was meant to refer to some type of criminal misconduct, in which case, as a matter of Constitutional Law, it could not mean "misconduct" within the meaning of Section 5 (2), and so had nothing to do with "notice of misconduct" under that Section. If Mr. Shoniker's argument is that Mr. Kelly was saying that Mrs. Taylor was in trouble because of her conduct, but that that conduct didn't approach wrongdoing in the criminal sense, then the statement had no significance to this Inquiry. I am specifically prohibited, by my terms of reference, from making findings of criminal responsibility. However, conduct that doesn't approach wrongdoing may still be open to criticism by a Commission of Inquiry. The Board has frequently proclaimed its expectation of criticism. As recently as July 17, 1991, Mr. Shoniker said (vol. 240, p. 49): "The Board of Commissioners of Police and the individual members of the Board have always accepted the fact that they would be open to criticism by your Honour's report. To the extent that your Honour's report would be constructively critical and put this police force in a better light, that is something that the Board of Commissioners of Police has always expected. However, there is a difference between the concept of being open to general criticism for decisions made; there is a difference between being open to constructive criticism that will assist or facilitate in advancing the cause of law enforcement, and formal notice under Subsection 5 (2) of the *Public Inquiries Act* that a finding of misconduct is going to be made against you. They are apples and oranges, in my respectful submission, Mr. Commissioner, and they ought to be treated as such." This, of course, illustrates my earlier point regarding these applications being premature. Until the report has been prepared, one cannot judge whether it contains findings of misconduct or simply criticism. Furthermore, the Board does not complain that it cannot respond to criticism of its conduct revealed in the evidence; how then can it complain that it cannot respond to allegations of possible misconduct revealed in the evidence? The evidence and events are the same. The fine line between criticism and misconduct may be seen differently by different persons; the difference is in the eye of the beholder. In any event, in my view as set out at pp. 8 and 9 of my ruling on the VanderMeer motion, which I incorporate here, my focus as Commissioner will be on recommendations to avoid future repetition of improper conduct rather than on the conduct itself.

Thirdly, Mr. Shoniker submits that his clients were prejudiced because their evidence was not led by their own counsel. Mrs. Taylor, Board Chairman, first gave evidence on June 21, 1989, and was led by Mr. Shoniker in chief. She was recalled to the stand on September 12, 1989, and was first examined by Commission counsel and cross-examined by Mr. Shoniker. On October 16, 1989, Mrs. Taylor was called to the stand on a different subject and was led in chief by Mr. Shoniker and cross-examined by Commission counsel and others. On June 24, 1990, Mrs. Taylor gave evidence on another subject and was examined in chief by Commission counsel and cross-examined by others and Mr. Shoniker. At no time, in my presence, nor on the record, were there any discussions on the question of who would lead. Two other members of the Board also gave evidence without any discussion on the order of examination. As a matter of fact, the only discussions at any time during the hearings I recall about the order of examination of any witness was when counsel for a witness insisted they should have the advantage of cross-examining at the very end of the witness' evidence after other counsel had completed their examinations. In any event, since no protest was made at the time, it is much too late to complain now. I find no unfairness in that regard.

In a general way, without reference as to how it affects the question of timing of the notices, Mr. Shoniker complains that his clients have been denied natural justice in relation to several of my rulings. At the beginning of this Inquiry, before the opening of evidentiary hearings on November 14, 1989, the Inquiry investigators, all of them Senior Metro Toronto Police Officers, attempted to interview as many as possible of the prospective witnesses. They requested permission from counsel for ex-Chief Gayder to interview Mr. Gayder. Because Mr. Gayder was an acknowledged target of most of the allegations contained in the 1977 IIT Report, his counsel refused to allow him to be interviewed unless the Commission would undertake that the transcript of the interview would be revealed to none other than the investigating officer and Commission counsel. Because it was essential that Commission counsel should have some idea of what Gayder's evidence might be in order for him to prepare his examination of Gayder, and to decide what witnesses should be called, and in order to save the great amount of time that might be wasted should Commission counsel have to examine Gayder without any idea of what his evidence might be, I consented to Commission counsel giving the required undertaking. Without the undertaking, there would have been no interview to assist Commission counsel, and no interview to disclose to other parties. However, counsel for the Board of Police Commissioners applied to me to release copies of the Gayder interview to them. In my ruling of December 13, 1988, I refused to compromise the credibility of the Inquiry by breaching the undertaking, particularly in view of the fact that had no undertaking been given, there would have been no interview to be released. That ruling was not appealed, and cannot be reargued at this time. I should point out that, because of the undertaking, I myself have not read the interview.

Mr. Shoniker also complains that, in August of 1988, before hearings had commenced, during a telephone conversation between Staff Sergeant Cleveland, an Inquiry investigator, and Mr. Fedorsen (counsel for Chief Shoveller and law partner of Mr. Shoniker), Mr. Fedorsen discovered that part of his conversation was being recorded. Staff Sergeant Cleveland explained that his telephone was connected to the recorder because he had been taking statements from a variety of prospective witnesses over the telephone and, when it came to a portion of Mr. Fedorsen's conversation relating to possible times that Mr. Fedorsen's client would be available to be interviewed and the permissible areas to be covered, Staff Sergeant Cleveland flipped on the recorder in order to have an accurate record of the various times and areas suggested. This explanation was apparently accepted by Mr. Fedorsen and Mr. Shoniker in view of their later comments. On December 7, 1988, Staff Sergeant Cleveland was being questioned by Mr. Shoniker on the witness stand. In vol. 13 of the transcript, p. 32, Mr. Shoniker in questioning Staff Sergeant Cleveland states: "I think that this witness, Mr. Commissioner, is an officer who should be, and deserves to be recognized in a very special way. My client, the Board of Commissioners of Police, are very, very grateful, not only to the Metropolitan Toronto Police Force for supplying the fine investigators that we have, but particularly Staff Sergeant Cleveland. I know, and I think everybody appreciates the great deal of time that you've put into this Inquiry, in general, and in particular, the tedious job. I know you think that's – you're a little embarrassed by that. I know I've taken you by surprise." Further on in his cross-examination, on December 13, 1988 (vol. 16, p. 70) Mr. Shoniker says: "Staff Sergeant Cleveland–I almost called you Staff Superintendent Cleveland." Cleveland: "Thank you." Shoniker: "You could use the promotion after all your work," and, at p. 81 Mr. Shoniker stated: "This officer has a reputation far beyond Metropolitan Toronto. He takes a building apart brick-by-brick. When he's finished, he can tell you how many stones are in each brick." In the same volume, p. 95, Mr. Fedorsen, in questioning Staff Sergeant Cleveland states: "Let's backtrack to your position as a Homicide investigator, prior to ever being on this investigation, just so we can get an idea of how topnotch investigators work." In view of these ringing endorsements by Mr. Shoniker and Mr. Fedorsen, made publicly sometime after the telephone recording incident, I find it difficult to accept Mr. Shoniker's complaint that he perceives that there has been a denial of natural justice as a result of the recording incident.

Fourthly, Mr. Shoniker submits that because the actual notices of alleged misconduct were not delivered until the end of the evidence, the Board was deprived of its right to refuse to produce its minutes and other documents. Over a year ago, when the Board refused to produce these items, I ruled that all such documents that were relevant to the Inquiry and not covered by solicitor and client privilege must be produced. In any event, it is not open to a Board that has repeatedly proclaimed its intention to seek the truth, no matter the cost or embarrassment to its members, to now complain that it has been too cooperative. The Order in Council expressly orders "That all Government Ministries, Boards, Agencies and Commissions shall assist the Commissioner to the fullest extent in order that he may carry out his duties and functions." I do not accept the submission that the Board has been deprived of any rights in this regard.

Mr. Shoniker submits that some of the May 15 notices appear to criticize Board counsel, and that it would be beyond my jurisdiction to ascribe misconduct to counsel under term 12 of the terms of reference, which refers to misconduct of members of the Force and other police agencies. I, of course, agree. This is not an inquiry into the legal profession or its members. Nevertheless, I consider I have an absolute right to control the process of this Inquiry and this includes the right, should I see fit, to comment in my report upon the conduct of counsel by way of criticism or commendation. However, I assume that actions taken by counsel are taken on the instruction of their clients, and normally any criticism of such actions should be directed at the client. As Commission counsel pointed out, clients cannot escape criticism by hiding behind the gowns of their lawyers.

Sergeant Peressotti's position is different from the others. On October 18, 1989 (transcript, vol. 113, pp. 4-14), Sergeant Peressotti was called as a witness, and he requested standing and funding because he had taken part, without notifying his superiors in the Niagara Regional Police Force, in a secret Ontario Provincial Police investigation, code-named "Project Vino." Commission counsel stated that he did not intend to make submissions that Sergeant Peressotti was at fault for taking part in "Project Vino," and canvassed all other counsel as to their intentions. Some counsel indicated they could not agree without instructions from their clients, but Sergeant Peressotti did not pursue his application. Later in the Inquiry he was recalled as a witness on another matter, as a result of which Mr. Matheson, counsel for Sergeant Typer, filed a notice on May 15, 1991, questioning whether Sergeant Peressotti was guilty of misconduct under Section 5 (2) because he and Sergeant VanderMeer alleged that Sergeant Typer had surreptitiously rendered inoperative a body pack intended to be used in a wiretap procedure, and had later asked an informant whether Sergeant Typer had altered wiretap tapes. By a letter delivered to Sergeant Peressotti on May 16, 1991, Commission counsel advised him that they did not intend to ascribe misconduct on the Sergeant's part in final submissions, but had included allegations of possible misconduct in the May 15 notices because they are matters in evidence and might be referred to by others. When Sergeant Peressotti attended on this motion, he submitted that he had understood from Commission counsel that he would not be subject to an allegation of misconduct, and had been prejudiced by acting on that assumption in not requesting counsel to advise him during his evidence.

I must bear in mind that Sergeant Peressotti is a layman and unrepresented by counsel. It is apparent that he took too broad a view of Commission counsel's statement of October 18, 1989, but I accept his evidence that he believed it meant that no misconduct, within the meaning of Section 5 (2), would be made against him arising out of any evidence before the Inquiry. Commission counsel has stated on this motion that he does not intend to allege Section 5 (2) misconduct against Sergeant Peressotti in his final submissions. Sergeant Peressotti's involvement in potential findings of misconduct is not great enough to justify the delay and expense in now providing him with counsel and rehearing the evidence affecting him. I consider that I can come to a factual conclusion on the evidence as it affects Sergeant Typer without making any finding under Section 5 (2) against Sergeant Peressotti, and in view of Sergeant Peressotti's reliance to his prejudice upon his understanding, I believe that as a matter of fairness I should grant him some relief. Accordingly, while I do not grant Sergeant Peressotti's motion on the grounds stated therein to the effect that the requirements of Section 5 (2) cannot be met, or that the notice of May 15, 1991, exceeds my jurisdiction, in the interests of fairness I rule that I shall not consider any questions as to whether Sergeant Peressotti's conduct amounted to misconduct within the meaning of Section 5 (2) of the *Public Inquiries Act*.

For reasons already given, all other motions are dismissed.

Ruling of the Divisional Court of March 31, 1992: Ability of the Inquiry to make findings of misconduct - the Notice requirements of s.5(2) of the *Public Inquiries Act*

ONTARIO COURT OF JUSTICE
DIVISIONAL COURT
O'DRISCOLL, O'BRIEN and AUSTIN JJ.

IN THE MATTER OF The Royal
Commission of Inquiry Into The
Niagara Regional Police Force

AND IN THE MATTER OF the
Decisions of the Commissioner
The Honourable Justice W.E.C.
Colter, released September 3,
1991;

AND IN THE MATTER OF a stated
Case Pursuant to Section 6
of the Public Inquiries Act
R.S.O. 1980, c.411

BETWEEN:

CORNELIS VANDERMEER,
DENISE TAYLOR and
NIAGARA REGIONAL POLICE
SERVICES BOARD

Applicants

-and-

ROYAL COMMISSION OF INQUIRY
INTO THE NIAGARA REGIONAL
POLICE FORCE

Respondent

Robert P. Armstrong Q.C.
and Michael A. Penny
for the applicants

W.A. Kelly, Q.C. and
Ronald D. Collins for
respondent Commission

D.W. Brown, Q.C.
and J.P. Zarudny for
Attorney - General,
Intervenor

F.D. Pickering for
ex-Chief Gayder

Heard: December 4, 5, 6
and 16, 1991

AUSTIN J.:

Cornelis VanderMeer is a Sergeant of the Niagara Regional Police Force. Denise Taylor is a member and former chairman of the Niagara Regional

Police Services Board. VanderMeer, Taylor and the Board apply to this court for alternative forms of relief. One is judicial review of decisions made on September 3, 1991, by the Honourable W.E.C. Colter, Commissioner of the Royal Commission of Inquiry into the Niagara Regional Police Force. In the alternative, the applicants ask this court to order the Commissioner to state a case to this court with respect to those decisions.

The applicants seek to prevent the Commissioner from making any findings of misconduct against them.

The decisions deal with whether notice had been given to the applicants as required by the *Public Inquiries Act*, R.S.O. 1980, c.411, s.5(2). Section 5 reads as follows:

> (1) A commission shall accord to any person who satisfies it that he has a substantial and direct interest in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by his counsel on evidence relevant to his interest.
>
> (2) No finding of misconduct on the part of any person shall be made against him in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the misconduct alleged against him and was allowed full opportunity during the inquiry to be heard in person or by counsel.

The applicants argue they did not receive the notice required and, as a result, the Commissioner is now unable to give them a full opportunity to be heard.

FACTS

In 1987 relations between the Board and the then-Chief of Police, James Gayder were not smooth. An internal investigation was conducted. Gayder resigned. The results of the investigation were reported to the Ministry of the Attorney General. The Ministry took the position that the report did not disclose reasonable and probable grounds for any criminal charges. The Board secured other opinions to the contrary. The Board then asked the Ministry for a public inquiry. This was first refused and then granted, effective March 25, 1988.

The Order in Council reads as follows:

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS concern has been expressed in relation to the operation and administration of the Niagara Regional Police Force, and

WHEREAS the expression of such concerns may have resulted in a loss of public confidence in the ability of the Force to discharge its law enforcement responsibilities, and

WHEREAS the Niagara Regional Board of Commissioners of Police has asked the Government of Ontario to initiate a public inquiry into the operation and administration of the Force, and

WHEREAS the Government of Ontario is of the view that there is need for the public and members of the Force to have confidence in the operation and administration of the Force, and

WHEREAS it is considered desirable to cause an inquiry to be made of these matters which are matters of public concern,

NOW THEREFORE pursuant to the provisions of the *Public Inquiries Act*, R.S.O. 1980, c.411, a Commission be issued appointing the Honourable Judge W.E.C. Colter who is, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization, to inquire into, report upon and make recommendations with respect to the operation and administration of the Niagara Regional Police Force since its creation in 1971, with particular regard to the following:

(1) the hiring practices and promotional processes of the Force;

(2) the storage and disposal of all property seized or otherwise coming into the possession of the Force during the discharge of its responsibilities, with particular emphasis on the storage and disposal of firearms;

(3) the policy and practices of the Force with respect to the use of police or municipal resources and any use of those resources for private purposes;

(4) any inappropriate practices or procedures with respect to the management of the Force which have been established either by the Niagara Regional Board of Commissioners of Police or by senior officers of the Force;

(5) the state of existing relations between members of the Force and the Niagara Regional Board of Commissioners of Police;

(6) the reporting relationships between the senior officers of the Force and the Niagara Regional Board of Commissioners of Police and internal reporting relationships within the Force;

(7) the policies, practices and procedures of the Force and the Niagara Regional Board of Commissioners of Police respecting public complaints against members of the Force;

(8) the matters disclosed by the Inquiry into the Drug Raid on the Landmark Hotel in 1974 and the propriety, efficiency and completeness of any other investigations into the activities of the Niagara Regional Police Force by other police forces or police agencies since the creation of the Niagara Regional Police Force and the action taken to correct identified problems to implement recommendations resulting from such Inquiry and investigations;

(9) the morale of members of the Force;

(10) whether the amalgamation of the police forces which now constitute the Force has resulted in a cohesive police organization that permits orderly and appropriate functioning;

(11) the policies and practices of the Force relating to release of information to the news media, and the state of existing relations between the Force and the news media; and

(12) improprieties or misconduct on the part of members of the Force or any other police agencies arising out of the matters herein enumerated,

AND THAT Government Ministries, Boards, Agencies and Commissions shall assist the Commissioner to the fullest extent in order that he may carry out his duties and functions, and that he shall have authority to engage such counsel, expert technical advisors, investigators and other staff as he deems proper at rates of remuneration and reimbursement to be approved by the Management Board of Cabinet in order that a complete and comprehensive report may be prepared and submitted to the Solicitor General,

AND THAT the Ministry of the Attorney General will be responsible for providing administrative support to the Inquiry,

AND THAT Part III of the said *Public Inquiries Act* be declared to apply to the Inquiry,

AND THAT Order in Council numbered O.C. 429/88, dated the 18th day of February, 1988, be revoked.

Recommended "Joan Smith" Concurred "Murray J. Elston"
Solicitor General Chairman

Approved
and Ordered March 25, 1988 "Lincoln Alexander"
Date Lieutenant Governor

Counsel to the Commission was appointed. In addition, an investigation staff of six Metropolitan Toronto police officers was seconded full-time to the Commission.

VanderMeer had been a member of the Internal Investigation Team (IIT). He was interviewed on nine occasions by the investigating staff before the hearings began, and a further 15 times during the taking of evidence. That evidence began on November 14, 1988, and continued on and off over 227 hearing days until November 20, 1990. VanderMeer gave evidence on 26 of those days.

Ten of the interviews he gave were transcribed and copies of the transcript were available to counsel at the hearing. This procedure was followed with all other police witnesses except Gayder. He gave one or more interviews, but the transcripts were available only to Commission counsel. This apparently was a condition Gayder had imposed or extracted before agreeing to be interviewed.

VanderMeer and the Board asked for and were granted standing. Each was represented by counsel at the hearing. Taylor was a member of the Board. She did not ask for standing in her own right and had no counsel representing her alone.

Like VanderMeer, Taylor gave a lengthy interview to Commission staff on May 18, 1988. The transcript was 185 pages long and was available to all participants. She gave three additional interviews to Commission counsel.

The hearings were divided into four phases according to subject matter. After each phase, submissions were received from counsel on that particular phase.

The first phase dealt with guns and other weapons registered in Gayder's name and found in a closet near his office.

The hearings on phase 1 started on November 14, 1988, and ended on April 20, 1989. Submissions took from May 1 to 8, 1989.

The second phase (May 9 - August 15, and August 21-23, 1989) dealt with the use of Force resources. Evidence was given about new tires and a coat of paint for a car owned by Gayder's secretary, the purchase of a police vehicle by a member of the Force, and the use of a Force bank account for private purposes, e.g. retirement gifts.

The third phase (August 28 - September 20, and August 2, 1989) dealt with hiring practices and alleged nepotism on the part of Gayder.

The fourth and last phase (October 10, 1989 - November 20, 1990) dealt with the internal investigation, the role of the Board and of Mrs. Taylor, the role of Chief Shoveller (who replaced Gayder), the earlier investigations by the Ontario Police Commission and by the Ontario Provincial Police, and allegations respecting infiltration of the Force by organized crime. The last evidence in this phase was heard on November 15, 1990, but submissions have not yet been heard because of the issues presently before the court.

It appears that until October 11, 1990, there was no discussion of the notice required by s.5(2) of the *Public Inquiries Act*. At a meeting of counsel that day, it was agreed by all but one that the record of the Commission, the contents of the submissions to be made in writing by counsel, and the right to respond by further evidence, would satisfy the requirements of s.5(2). The one exception was counsel for VanderMeer. Counsel for VanderMeer took no part in the discussion and advised Commission counsel that VanderMeer "was not involving himself" in the discussion.

On October 15, 1990, Commission counsel wrote to all other counsel stating that any counsel who had advised that he or she required instructions from his or her client as a result of the meeting should notify Commission counsel not later than October 19, 1990. On October 24, 1990, Commission counsel wrote to VanderMeer's counsel pointing out that he had not heard from them. No reply was received and no indication was received from any other counsel that they wished to take any different position. The immediate reason for pursuing this matter was to arrange for the calling of evidence should any counsel indicate any desire to do so. No one made any such request and on November 20 the hearing adjourned pending the fixing of a date for the filing of submissions on the final phase.

The matter of notice lay dormant until revived by counsel for VanderMeer on December 31, 1990. Counsel for VanderMeer wrote to Commission counsel to advise that he was proceeding on the assumption that since no notice of misconduct under s.5(2) had been provided to VanderMeer, no finding of misconduct could be made against him.

Commission counsel attempted, without success, to reach agreement with counsel for VanderMeer. As a consequence, Commission counsel decided to give notice to all against whom he might possibly recommend allegations of misconduct. The Commission then directed all parties who were proposing to recommend findings of misconduct to give notice to all prospective "targets" by May 15, 1990. These directions were carried out.

Over thirty people were "named" in the notices. They were many allegations against VanderMeer, Taylor and the Board. It was agreed that in view of the number, breadth and seriousness of the allegations, they would not be made public at that time. The Commission gave the parties four weeks in which to consider whether they wished to call evidence as a result of the notices. During that period, no one indicated any desire to call any evidence. The next step was to be the hearing of submissions on the evidence taken at the hearing.

By notice of motion dated June 24, 1991, counsel for VanderMeer moved before the Commission for an order that no allegations of misconduct would be received and no findings of misconduct would be made against VanderMeer upon the ground that "the requirements of s.5(2) of the *Public Inquiries Act* cannot be met in the circumstances of these proceedings." In the alternative, counsel moved that the Commissioner state a case to the Divisional Court.

By notice of motion dated July 2 and returnable July 8th before the Commission, counsel for the Board moved for an order that no allegations of misconduct be received and no findings of misconduct be made against the members of the Board, including Taylor. There was no parallel motion for a stated case.

Extensive argument was heard on these motions in July and on September 3 lengthy reasons were delivered disposing of them.

In brief, the Commissioner dismissed the motions upon the ground that the applicants had received the notice required by the *Act*. He also dismissed them upon the ground that, as notice had in fact been given and there was still an opportunity to call evidence, the motions were premature. In dismissing the motion of Taylor and the Board, the Commissioner relied as well upon the agreement amongst counsel, made October 11, 1991, that the record of the Commission and the written submissions to be made by various counsel would satisfy the requirements of s.5(2).

The present applications asks that the orders of the Commissioner be quashed. In the alternative, the applicants ask that the Commissioner be directed to state a case to this court, by way of appeal from those decisions.

THE ISSUES

One way of framing the issues is to ask whether s.5(2) of the *Public Inquiries Act* has been complied with or has been violated. The position of counsel for the applicants is that notice can only be given by or on behalf of the Commission and that it must be in writing. As to timing, counsel's submissions were not so precise; they varied from suggesting it must be before any evidence was given, to suggesting a time before any evidence was given as against his clients. The position of counsel for the Commission was that notice need not be in writing or from the Commission. He argued that it could be actual notice.

CONCLUSION

In my view, it is not necessary in the present case to decide the issues of writing, source or timing. I agree with the Commissioner that the applicants and their counsel were well aware from the outset of the possible allegations against them, that they had every opportunity during the course of the Inquiry to respond to those allegations, that they took those opportunities and responded to the allegations, that they had witnesses called specifically to deal with the allegations, and that the door remains open to them to call or recall witnesses for the purposes of examination or cross-examination in order to further respond to any and all allegations.

As stated earlier, there were many allegations made against each of VanderMeer, Taylor and the Board. A few of them are set out in the reasons of the Commissioner. In this court, counsel for the Commission presented an exhaustive analysis of each allegation. The analysis sets out the source of the allegation, when it was made and by whom, when and how it was acknowledged by its "target," when and how it was acknowledged by its "target's" counsel and how it was responded to. Specifically, it provides the details of the examination and cross-examination of "accusing" witnesses and the calling of witnesses at the request of target's counsel in order to confront "accusers," or to elicit supportive testimony. The court was given a meticulous analysis, including excerpts from the examination and cross-examination of witnesses directed towards contradicting, deflecting, minimizing or otherwise disposing of each allegation. The analysis is summarized in the factum of counsel to the Commission. The sources are found in the "Appendices to Respondent's Factum" which make specific reference to the 245 volumes of transcripts and over 500 exhibits. In my view, it would serve no useful purpose to repeat or summarize that analysis here.

In his reasons the Commissioner refers to some of the allegations and provides excerpts from the transcript where either the "target" or his or her counsel acknowledges the allegation and responds to it. At p. 6 of his reasons dealing with VanderMeer (Application Record, vol. I, tab 4, p. 70), the Commissioner said:

> Both Sergeant VanderMeer and his counsel have been present during the evidence concerning Sergeant VanderMeer's investigations and it is inconceivable that they would not have realized that Sergeant VanderMeer was the subject of vigorous criticism of his investigative techniques, his making allegations without proper evidentiary support, and an occasional lack of concern for the principles of "the chain of command."

The excerpts from the transcript clearly support this conclusion.

A chronological review of the Inquiry also supports the Commissioner's conclusion that the motions of VanderMeer et al were premature. The Commissioner had always indicated his willingness to hear further evidence should any person deem it necessary for the purposes of responding to an allegation of misconduct.

VanderMeer had standing and had counsel representing him throughout. So did the Board, and its position as a Board is no different from that of VanderMeer. It was suggested, however, that Taylor was in a different position as she did not have standing and was not separately represented. This does not appear to have been argued before the Commissioner as he does not deal with it in his reasons. The plain fact is that counsel appeared on behalf of the Board and the Board included Taylor. Taylor's interests were adequately represented.

At p. 4 of his reasons dismissing the motion by the Board (Application Record, vol. I, tab 5, p. 84):

> ... As in that case [VanderMeer], the Board and its members must have been aware, throughout the hearings, that they might be criticized, and the Chairman complained in her evidence of the fact that

> they were being made "targets." It would be impossible for members of the Board to undergo the cross-examination to which they were subjected, particularly by counsel for ex-Chief Gayder and the Police Association, as well as others, without being very much aware of the allegations of instances of improper conduct, both general and specific, that might be made against them. Indeed, Board counsel has complained bitterly on many occasions, and as recently as the last few weeks, about those allegations made by other counsel. As well, Commission counsel has, in his submissions, set out the exact spot in the transcripts where evidence of the allegations provided notice to the Board and its counsel. These references clearly indicate that the Board and its counsel had to be aware of what was being alleged against the Board by Commission counsel and other parties, long before the evidence concluded.

Again, these conclusions are amply supported by the evidence.

A complaint was made before both the Commissioner and this court that the applicants had been prejudiced by not having their evidence led by their own counsel. In the circumstances, the applicants appear to have had the best of all worlds. As is not uncommon with royal commissions, an agreement was made amongst counsel early in the proceedings as to the order in which counsel would examine or cross-examine. That agreement provided that in most instances evidence would be led by Commission counsel. It also provided for changes depending upon particular circumstances. As a result, at times witnesses were led by Commission counsel and on other occasions led by their own counsel. On occasion, counsel had the benefit of cross-examining their own clients. No objection appears to have been taken at any time on behalf of the applicants. No disadvantage whatever has been demonstrated and it is difficult to give any weight to this argument.

In the result I see no substance whatever in any or all of the objections taken by counsel on behalf of the applicants. What appears to have happened is that during the course of the Inquiry the accusers have become the accused. As such, their interest in reaching the day of judgment has abated.

I would dismiss the application. Insofar as costs are concerned, counsel for the applicants indicated that costs were sought on their behalf. Counsel for the Commission indicated that instructions would be sought when the matter was disposed of. There will be no costs either for or against Gayder or the Attorney General. The applicants are clearly not entitled to costs. Counsel for the Commission may speak to the matter of costs by letter forthwith.

Released: March 31, 1992 Application dismissed

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APPENDIX J
ABBREVIATIONS

The Board	Niagara Regional Board of Commissioners of Police, OR its successor, Niagara Regional Police Services Board
CAO	Chief Administrative Officer
CBC	Canadian Broadcasting Corporation
Chairman	Chairman of the Board
CIB	Criminal Investigation Branch
CISO	Criminal Intelligence Services of Ontario
Commission	Commission of Inquiry into the NRPF
Commissioner	Commissioner appointed to inquire into the NRPF
CPIC	Canadian Police Information Centre
DMA	Department of Municipal Affairs
DNR	Dialled Number Recorder
DSR	Daily Supplementary Report
GATB	General Aptitude Test Battery
GOR	General Occurrence Report
ID	Identification
IIT	Internal Investigation Team (of the NRPF)
JFO	Joint Forces Operation
MPP	Member of provincial parliament
NCIC	National Crime Information Center (FBI)
NRPA	Niagara Region Police Association
NRPF	Niagara Regional Police Force
OAPSB	Ontario Association of Police Services Boards
OCCPS	Ontario Civilian Commission on Police Services (successor to OPC)
OPA	Ontario Police Association
OPC	Ontario Police Commission (predecessor of OCCPS)
OPP	Ontario Provincial Police
ORACLE	On-Line Records Access Computer for Law Enforcement
RCMP	Royal Canadian Mounted Police
SEU	Special Enforcement Unit
SIU	Special Investigative Unit
USA	United States of America

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